

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

19-CR-227-JLS

JOSEPH BONGIOVANNI,  
PETER GERACE, JR.,

Defendants.

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UNITED STATES OF AMERICA,

v.

23-CR-37-JLS-MJR

PETER GERACE, JR.,

Defendant

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**GOVERNMENT'S RESPONSE IN OPPOSITION OF THE DEFENDANT'S  
SECOND MOTION FOR RECONSIDERATION OF DETENTION**

**THE UNITED STATES OF AMERICA**, by and through its attorney, Trini E. Ross, United States Attorney for the Western District of New York, Joseph M. Tripi, David J. Rudroff, and Nicholas T. Cooper, Assistant United States Attorneys, Corey R. Amundson, Chief, United States Department of Justice, Public Integrity Section, and Jordan Dickson, Trial Attorney, United States Department of Justice, Public Integrity Section, of counsel, hereby files this response in opposition to the defendant's motion for reconsideration of detention.

**BACKGROUND AND PROCEDURAL HISTORY**

On February 25, 2021, a Grand Jury sitting in the Western District of New York returned an 18-count Second Superseding Indictment in case 19-CR-227-JLS. Defendant

Gerace was charged in Counts 2, 6, 7, 8, and 9 of the Second Superseding Indictment as follows: Count 2 charged defendant Gerace with Conspiracy to Defraud the United States; Count 6 charged defendant Gerace with Paying a Bribe to a Public Official; Count 7 charged defendant Gerace with Maintaining a Drug-Involved Premises; Count 8 charged defendant Gerace with Conspiracy to Distribute Controlled Substances; and Count 9 charged defendant Gerace with Conspiracy to Commit Sex Trafficking. *See* Dkt. 89. Generally, as a perusal of the Second Superseding Indictment readily establishes, most of the conduct underlying the charges relates to the defendant's presence at, involvement in, and control of, Pharaoh's Gentlemen's Club. The charges establish the defendant is presumed to be a flight risk and a danger to the community.

On March 1, 2021, defendant Gerace was arrested in Florida during the COVID-19 pandemic. At an initial appearance in the Southern District of Florida on March 2, 2021, where an attorney from the USAO-WDNY appeared remotely, defendant Gerace was ordered released on various conditions recommended by the government.<sup>1</sup> *See* Dkt. 93. ; *see also* Transcript of Proceedings, March 2, 2021, attached hereto as **Exhibit A**. Notably, at the March 2, 2021, appearance, U.S. Probation in the Southern District of Florida recommended detention, and the defendant initially consented to the conditions of release requested by the government, as follows:

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<sup>1</sup> This was due to issues related to the pandemic and government representations made to Gerace's prior counsel, Joel Daniels, Esq., regarding seeking conditions of release or moving for detention.

4                   THE COURT: Well, Mr. Daniels, it sounds to me like  
5 those are some major objections to the government's recommended  
6 bond. If that is the case, then I think you are going to have  
7 to make a decision whether you want to have a bond hearing here  
8 or with the judge in the Western District of New York, because  
9 obviously I am not going to make this decision because it  
10 sounds like you want a bond hearing, is what I'm hearing you  
11 say.

12                   MR. DANIELS: We don't want that, Judge. We are  
13 willing to go along with the government's recommendation. We  
14 appreciate them allowing him to be released, come back to  
15 Buffalo, and appear before a magistrate here, Judge. We were  
16 just opposing for the record some of the conditions that the  
17 government was requesting. But that is your decision, Judge.

*See Exhibit A* at 22, lines 4-17. Magistrate Judge Valle further commented, in part, "Well, this was an interesting case because, but for the government's recommendation, this is a case where I think detention would be warranted." *Id.*, at 25 (lines 3-5.).

On March 4, 2021, U.S. Probation provided an amended memorandum which establishes that the defendant committed an additional crime the day of his arraignment in Florida. In his original pre-trial services interview, the defendant stated that he had used cocaine one and a half years ago. However, subsequently to his appearance before Magistrate Judge Valle (and subsequently to the government finalizing its recommendation), U.S. Probation learned that the defendant tested positive for cocaine. U.S. Probation Officer Assistant Andre McCray's March 4, 2021, Memorandum, which is attached hereto as **Exhibit B**, provided an update in pertinent part:

**It is to be noted that the time of the defendant's initial drug test conducted in the Southern District of Florida, he tested positive for cocaine. Mr. Gerace reported taking some pills at a social gathering but, did not report cocaine use. At the time of the pretrial services interview, the defendant reported a history of cocaine use, with his last date of use being approximately one and a half years ago.**

*See Exhibit B*, at 1 (emphasis in original). Accordingly, from the outset of this case, defendant Gerace has lied to U.S. Probation.

United States District Court Judge John L. Sinatra, Jr. ("Judge Sinatra"), later reduced the release conditions, over the government's objection, on April 14, 2021, *see* Dkt. 112, and again over the government's objection, on January 19, 2023. *See* Dkt. 361.

On November 30, 2022, District Court Judge Sinatra set a date certain trial for June 21, 2023, and issued a Pre-Trial Order the same day. *See* Dkts. 324-325. The government began providing voluminous *Jencks* Act materials in January 2023, after the entry of a Protective Order. *See* Dkt. 347.

On March 23, 2023, a Grand Jury sitting in the Western District of New York returned a four-count Indictment in case 23-CR-37. Defendant Gerace was charged in Counts 1 through 4 as follows: Count 1 charged defendant Gerace with Tampering with a Witness; Count 2 charged defendant Gerace with Tampering with a Witness; Count 3 charged defendant Gerace with Tampering with a Witness; and Count 4 charged defendant Gerace with Distribution of Cocaine. See Dkt. 1, 23-CR-37-JLS.

On March 24, 2023, defendant Gerace was arraigned on the 23-CR-37 Indictment, and the government moved for detention. A detention hearing for defendant Gerace was held and the government proceeded by proffer. After hearing the government's proffer, the defendant requested a continuance of the detention hearing. *See Exhibit C – Transcript of March 24, 2023, Detention Hearing.* The detention hearing was continued on March 27, 2023. The Court ordered the defendant detained pending trial, finding that no condition or combination of conditions w[ould] reasonably assure the safety of any other person and the community. In particular, Judge Sinatra found:

I've heard everything I heard on Friday and today, all pursuant to the factors in subsection G of 3142, which I've studied at length. Like I noted on Friday, a major focus for me is how I'm to weigh Mr. Gerace's compliance with the conditions in the 19-CR-227 case, on the one hand, with several items to kind of -- the counter way and stand in the face of that; and things like the new detail that I've heard from Mr. Tripi surrounding the Facebook incident, which resulted in the three counts of indicted conduct related to the Facebook incident in this case, including the corroboration of those details. Also new to me is the Government's proffer about Mr. Gerace referring to the victim witness as a snitch prior to the November 19, 2019, alleged conduct, and in real time as well. I still have some concerns as well about the Government's proffer about Mr. Gerace's apparent willingness to use his contacts in the legal system to improperly disadvantage those perceived as being against him. And there, in part, I'm concerned about the Michalski incident, also, as well as the [local police department] detective incident that I heard about on Friday as well. The cocaine and drug supplying and prostitution items aren't good facts either. The loan application issues, at a minimum, present recent untrustworthy activity from June, 2020 and July, 2021. Some of that activity after the releases in the 19-CR case. And in particular, noteworthy is the denial of prior convictions and current indictment, among other items on those applications. I also note that -- I don't know if I need to note that, but I note that witness tampering is something that goes to the heart of the justice system. And I think that's something that, at a minimum, the LaFontaine case accounts for and speaks to. Taking into account all of the G factors, including defendant's past conduct and how that relates to the safety of witnesses in this case and the safety of witnesses in the 19-CR case, I note that defendant's record of compliance is sufficient to rebut the presumption in section E-3. Nevertheless, I find by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person in the community, especially vis-a-vis witnesses against Mr. Gerace. **And I also note that the case law, for**

example, *LaFontaine*, about detention and witness tampering cases also notes cases about detention and obstruction of justice cases, even absent violence or threats of violence. Therefore, I order Mr. Gerace detained pending trial.

*See* Transcript of Proceedings, March 27, 2023, at 33-34, attached hereto as **Exhibit D** (emphasis added).

On March 28, 2023, the government filed its motion for joinder of the indictments, *see* Dkt. 411, and on April 28, 2023, Judge Sinatra ordered that Indictment 23-CR-37 would be consolidated with the Second Superseding Indictment 19-CR-227 for trial. *See* Dkt. 442.

On April 12, 2023, District Court Judge Sinatra denied defendant Gerace and defendant Bongiovanni's severance motions. *See* Dkt. 434.

On April 26, 2023, the government timely filed its Pre-Trial Memorandum and Motions in Limine. *See* Dkt. 441. The government incorporates the information contained in Dkt. 441 as part of its proffer of evidence in this case as though set forth fully herein.

On April 28, 2023, District Court Judge Sinatra issued a Decision and Order denying severance and granting the government's motion to consolidate Case Nos. 19-Cr-227 and 23-CR-37 for trial.

On May 10, 2023, the government filed a motion to stay (*see* Doc. No. 456) provisions of the Protective Order permitting dissemination of witness names, when it learned that

counsel for defendant Bongiovanni intended to move to withdraw as counsel. The Court granted the motion (*see* Dkt. 458).

On May 16, 2023, defendant Bongiovanni's former attorney filed a motion to withdraw as counsel due to health issues (*see* Dkt. 476), and on May 17, 2023, and District Court Judge Sinatra granted defendant Bongiovanni's former attorney's motion to withdraw and assigned new counsel to represent defendant Bongiovanni, set June 21, 2023, as the date to argue certain motions, and rescheduled the trial for August 14, 2023. *See* Dkt. 484.

On May 22, 2023, the defendant submitted his Motion to Reopen the Detention Hearing and for Pretrial Release, largely consisting of regurgitated arguments that previously failed to sway the Court. *See* Dkts. 490-493.

On May 23, 2023, District Court Judge Sinatra issued an Amended Pre-Trial Order. *See* Dkt. 489. Pursuant to the amended order, trial was scheduled for a **date certain** on August 14, 2023, and witness lists were due on June 16, 2023. *Id.* at 6.

On May 30, 2023, District Court Judge Sinatra issued a Decision and Order denying defendant's Gerace's motion to suppress the results of search warrants and for a *Franks* hearing. *See* Dkt. 496. That same day, on May 30, 2023, the government filed its response to the defendant's motion to reopen the detention hearing and for pretrial release. *See* Dkts. 497 [redacted version publicly filed], 498 [unredacted version filed under seal].

On June 6, 2023, Judge Sinatra issued a Decision and Order (D&O) denying the defendant's motion to reopen the detention hearing. *See* Dkt. 504. In his D&O denying the motion, Judge Sinatra properly held:

The Court has painstakingly considered all arguments on both sides, balancing Gerace's liberty interest with the need for witness and public safety—specifically, how the existing factors bear on whether the Court can conclude, by clear and convincing evidence, that "no condition or combination of conditions will reasonably assure the safety of any other person and the community." *See* 18 U.S.C. § 3142(f). Here, as in all cases, the Court is aware of the need for a careful balance of the competing concerns involved in the analysis of pre-trial release or detention, as well as the implications for Gerace and the public based on where the balance is struck. *See generally United States v. Salerno*, 481 U.S. 739, 746–47, 755 (1987).

In sum, the Court has reviewed the parties' proffers, arguments, and written submissions and identifies no basis, on this record, to grant Gerace's motion for pre-trial release.<sup>1</sup> The Court therefore denies Gerace's motion to re-open the detention hearing and for pre-trial release (Dkt. 491), in its entirety.

SO ORDERED.

Dated: June 6, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

Also, on June 6, 2023, defendant Gerace moved for reconsideration of the decision denying defendant Gerace's motion to suppress the results of the execution of search warrants at defendant's home and business. *See* Dkt. 505. The Court directed the government to respond by June 20, 2023. *See* Dkt. 508.

On June 7, 2023, defendant Gerace filed a motion to exclude a government expert (*see* Dkt. 509), and Attorney Cohen filed a motion for reconsideration of denial of his motion to file an untimely motion to suppress cell phone evidence stemming from a border search that occurred in April of 2019. *See* Dkt. 510. Government responses were due June 20, 2023. *See* Dkts. 508, 512.

On June 8, 2023, Gerace was indicted and charged with four counts of wire fraud relating to an Economic Injury Disaster Loan (EIDL) that he obtained while on pre-trial release. *See* Case No. 23-CR-60. The allegations set forth in Case No. 23-CR-60 establish that the defendant committed parts of a \$2,000,000 Economic Injury Disaster Loan (EIDL) wire fraud while under pre-trial release conditions, and under the supervision of the U.S. Probation Office, in Case No. 19-CR-227. *See* Indictment, Case No. 23-CR-60-JLS attached as **Exhibit E**. The Indictment in Case No. 23-CR-60-JLS also provides for increased penalties because the defendant committed the criminal conduct while on release, as follows:

**ALLEGATION PURSUANT TO 18 U.S.C. § 3147**

**The Grand Jury Alleges That:**

26. As the defendant, PETER GERACE, JR., had been released pursuant to Chapter 207 of Title 18, United States Code, at the time of the commission of the felony offenses alleged in Counts 3 and 4 of this Indictment, should the defendant be convicted of Count 3 or Count 4 of this Indictment, the defendant is subject to the term of imprisonment prescribed in Title 18, United States Code, Section 3147(1), in addition to the penalties otherwise provided by law.

**All pursuant to Title 18, United States Code, Section 3147.**

Notably, the Indictment in Case No. 23-CR-60 is a changed circumstance, but one that strongly favors detention. At the time of the detention hearing on March 24 and 27, 2023, the EIDL Loan Fraud was only proffered information. Since that time, a Federal Grand Jury has returned a four-count indictment. Accordingly, in addition to the potential life sentence the defendant faces in Case Nos. 19-CR-227 and 23-CR-37, the defendant faces an additional 46 to 57 months imprisonment on Case No. 23-CR-60, plus an additional mandatory sentence of up to 10 years consecutive to any sentence imposed on this conviction pursuant to 18 U.S.C. § 3147.

On June 9, 2023, defendant Gerace filed a motion to dismiss the indictment. *See Dkt. 515.*

On June 16, 2023, after suffering a string of adverse ruling by Judge Sinatra, and after Gerace's attorney openly questioned Judge Sinatra's integrity in the media, defendant Gerace filed a witness list with over 200 names, and included names of two individuals that triggered a mandatory recusal of Judge Sinatra. In particular, this followed public comments by defendant Gerace's attorney the Buffalo News on June 6, 2023, "This judge continues to be particularly harsh to Mr. Gerace, and we see no legitimate basis for that," and "[h]e appears to accept whatever the prosecution says at face value, even though they are bare allegations not supported by evidence." *See, Lakamp, Patrick, The Buffalo News, June 6, 2023,* <[https://buffalonews.com/news/local/judge-refuses-to-release-strip-club-owner-ahead-of-bribery-sex--and-drug-trafficking/article\\_3fd18366-0475-11ee-a8d3-5fb60c07e3c4.html](https://buffalonews.com/news/local/judge-refuses-to-release-strip-club-owner-ahead-of-bribery-sex--and-drug-trafficking/article_3fd18366-0475-11ee-a8d3-5fb60c07e3c4.html)>

On June 21, 2023, Judge Sinatra issued a Text Order recusing himself, as follows: "Given Defendant Peter Gerace, Jr.'s inclusion of two individuals **as supposed character witnesses among the hundreds of individuals on his witness list**, recusal even in the absence of any bias, prejudice, or partiality is now required under 28 U.S.C. 455(b)(5)(iv). The undersigned is hereby recused. These cases (19-CR-227 and 23-CR-37), which have been joined for trial, will be reassigned to another District Judge for all further proceedings. SO ORDERED." *See Dkt. 535 (emphasis added).*

On June 30, 2023, the parties appeared before this Court and another set-in stone trial date was set for October 23, 2023. *See Dkt. 546.* During this appearance, Attorney Cohen

convinced this Court not to set the September 25, 2023, trial date the Court had selected, and trial was scheduled for October 23, 2023, notwithstanding the fact that, even with an August 14, 2023, trial date Attorney Cohen was committed to, the trial would have still been underway into October 2023. *See Transcript of Proceedings, June 30, 2023.* This was the third set in stone trial date involving over 200 government witnesses.

On July 15, 2023, defense counsel indicated that he has been terminated. *See Dkt. 567.*

On July 19, 2023, the parties appeared for a status conference related to Gerace's "termination letter." During the appearance, Attorney Cohen stated "[H]e has fired me for what he perceives to be my failure to follow through on instructions he has given me. I do not intend to allow my trial strategy to be controlled by a client." *See Transcript of Proceedings, on July 19, 2023 ("Tr. 07/19/2023")*, at 3. Also, Attorney Cohen stated for the first time, that Gerace's "dissatisfaction with me goes back for a long time." *Id.* Later during the July 19, 2023, appearance Attorney Cohen made additional comments suggesting that tactics may be involved. In particular, he stated:

- a. That granting defendant Gerace's motion to reconsider District Court Judge Sinatra's denial of Gerace's untimely motion seeking to suppress cell phone evidence "may dispose of this...we may not even have a problem if Your Honor considers that." Tr. 07/19/2023, at 13. This statement suggests that Gerace and/or Attorney Cohen are attempting to goad the Court into reversing District Court Judge Sinatra's prior decision (*see Doc. Nos. 330 and 368*) or risk adjourning this lengthy and complex trial for a fourth time. These statements and circumstances may appropriately lead the Court to conclude that defendant Gerace is trying to force the Court's hand akin to stating, "either reverse District Court Judge Sinatra's decision, or I am firing my lawyer and causing another delay in this trial."
- b. That "he's not asking for this, but if the Court pushed this [trial] off later on, maybe that could remove the time conflicts," such that other

attorneys will accept Gerace's case and get ready for the trial. Tr. 07/19/2023, at 15. Here, the defense implicitly requested an adjournment of the trial on one hand, while claiming they want a speedy trial on the other hand (*i.e.*, "The record is crystal clear, Judge, that we objected to the adjournment even when Mr. Harrington took ill and had to withdraw, we objected to an adjournment of the trial (*see* Tr. 07/19/2023, at 10)."). While Judge Sinatra previously rejected defense arguments that defendant Gerace's pre-trial incarceration merits release, *See* Dkts. 491, 491-1, 497, 498, 504, the defense already started to lay the groundwork for revisiting the issue of pre-trial detention when Attorney Cohen stated, "Mr. Gerace has communicated to me that he's been having a hard time trying to arrange for new counsel while he's locked up. The facilities there just -- he doesn't have access to a computer to search for lawyers, and he's going by other inmates who are there as to who might be a good lawyer. He just wanted Your Honor to know that." *See* Tr. 07/19/2023, at 22-23.

On July 28, 2023, the government filed an affidavit in opposition of withdrawal of defense counsel (awaiting docketing), and on August 3, 2023, the government filed a supplemental affidavit in opposition of withdrawal of defense counsel or alternatively to require any new counsel to be ready for trial on October 23, 2023 (awaiting docketing).

On August 8, 2023, defendant Gerace filed a sealed motion for reconsideration of detention (awaiting docketing). *See* August 8, 2023, Memorandum of Law at 4 (acknowledging the defendant's motion is one seeking reconsideration). This response ensues.

### **THE GOVERNING LAW**

As this Court has recently acknowledged, the "standard for a motion for reconsideration is strict, and courts generally will deny a motion for reconsideration unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by

the court.” *See* Decisions and Order (“D&O”), Dkt. 576 at 2 (citing *Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (punctuation omitted). Reconsideration of a prior decision is generally only justified in one of the following three circumstances: (1) an intervening change in controlling law; (2) new evidence; or (3) the need to correct a clear error of law to prevent manifest injustice. *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). Reconsideration should be denied when a movant “seeks solely to relitigate an issue already decided.” *Shrader*, 70 F.3d at 257. The standard for granting a motion for reconsideration does not change simply because a case has been reassigned to a different judge. *See* Dkt. 576 at 3 (citing *Arons v. Lalime*, 3 F. Supp. 2d 328, 330 (W.D.N.Y. 1998)).

The Second Circuit has made clear that, when a finding of dangerousness is related to violent conduct, it need not be shown that the defendant personally engaged in the violence. *United States v. Colombo*, 777 F.2d 96, 98 (2d Cir. 1985); *see also United States v. Salerno*, 481 U.S. 739, 744 (1987) (“The activities of a criminal organization [...] do not cease with the arrest of its principals and their release on even the most stringent of bail conditions.”). As in this case, the government may proceed by proffer. “It is well established in this circuit that proffers are permissible both in the bail determination and bail revocation contexts.” *United States v. LaFontaine*, 210 F.3d 125, 131 (2d Cir. 2000). The Second Circuit has held that witness tampering is a crime that threatens the integrity of the trial process and supports a finding that a defendant is a danger to the community. *Id.* (collecting cases).

#### **STATEMENT OF FACTS: TIMELINE OF MAJOR EVENTS**

As set forth in the government’s prior arguments and filings in support of detention, the facts of these case, coupled with the defendant’s history and characteristics, fully justify

Judge Sinatra's decision to detain the defendant pending trial based upon his dangerousness.

The following timeline applies to the facts of this case:

April 2019:

July 2019:

October 17, 2019:

October 31: 2019: Indictment 19-CR-227 was returned charging Bongiovanni, and it referenced Gerace as Coconspirator 1.

November 19, 2019: Gerace and others sent threatening messages to . Witness 2 sent the messages to using 's phone and Facebook account.

December 12, 2019: Law enforcement executed federal search warrants at PGC and Gerace's residence.

October 12, 2020: Gerace sued in state court. The government filed for an injunction of this lawsuit, which was granted by Judge Sinatra. The Second Circuit affirmed Judge Sinatra's decision on May 26, 2023, and stated, in part, the following:

15       The government's interest in the injunction was to avoid compromising the criminal and  
16       grand jury proceedings by preventing the evasion of justice and abuse of potential government  
17       witnesses. The Second Superseding Indictment was filed two months prior to the injunction  
18       request. This indictment explicitly named Gerace as a co-conspirator in an alleged criminal  
19       enterprise that had access to sensitive, confidential law enforcement intelligence and used that  
20       access to evade justice. At the time the district court considered the injunction, therefore, Gerace  
21       was aware of what the government sought to prove in its charges against him, which is relevant to  
22       the government's concern that Gerace might try to intimidate whomever he thought might testify  
23       against him. In fact, at the hearing on Gerace's motion to vacate, the government stated that a co-

1 conspirator had admitted that members of the enterprise had access to the names of potential  
2 cooperators. Transcript of Proceedings at 7, *United States v. Gerace*, No. 1:19-CR-00227-JLS-  
3 MJR (W.D.N.Y. July 22, 2021), ECF No. 182. According to the government, “witnesses ha[d]  
4 reported being or feeling threatened by Mr. Gerace and/or associates of Mr. Gerace.” *Id.*

*See* Mandate, Case No. 21-2419, Document 138 at 4-5. The Second Circuit continued, “Here, the potential interests of the government are considerable, whereas the potential prejudice faced by Gerace is *de minimis*. **Indeed, this is exactly the type of case—where a criminal enterprise thrives off of gathering and using confidential law enforcement intelligence—that merits the relief granted by the district court.**” *Id.* at 5 (emphasis added).

December 3, 2020:

March 4, 2021:

January 19, 2023:

January 24, 2023:

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<sup>2</sup> A copy of the agent’s report documenting this interview was provided to the defense as part of 3500 materials on March 24, 2023.

<sup>3</sup> A copy of this grand jury transcript was provided to the defense as part of 3500 material on March 24, 2023.

- February 3, 2023: Witness 2 was charged via sealed Criminal Complaint with three counts of witness tampering based upon the events of November 19, 2019, and with one count of false statements due to statements made to the FBI on January 24, 2023.
- February 8, 2023: Criminal Complaint was unsealed and available on Pacer. The Second Superseding Indictment charging Gerace and Bongiovanni was attached as Exhibit A of Criminal Complaint . Conditions of release were set by United States Magistrate Judge H. Kenneth Schroeder Jr., and available on Pacer.<sup>4</sup>
- February 16, 2023: Witness 2 appeared and proffered with the government.<sup>5</sup> Witness 2's attorney provided the text messages to the government wherein Gerace's attorney asked another attorney to reach out to Witness 2, in pertinent part as follows:

Omg I'm sorry to hear that  
hunny 😔  
Where are you living now?  
Are you ok otherwise?  
I know Mike well, great guy  
and great attorney. I'm  
guessing he's meeting you  
for the same concern I had  
as I got a call from Peter  
Gerace's attorney, Steve  
Cohen concerned that the  
feds might be trying to  
intimidate you or even just  
bring you in for questioning.  
He saw that I was your  
attorney in the past and  
reached out to me for me to  
make sure you were OK and  
knew I'm here if you need  
representation.  
And I want you to know I'm  
here even if you just need a  
friend as well 😊

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<sup>4</sup> A copy of the criminal complaint was provided in discovery to the defense as part of discovery on April 11, 2023. It was available publicly on Pacer since February 8, 2023.

<sup>5</sup> A copy of this proffer report was provided to the defense on May 26, 2023, with 3500 material disclosures.

<sup>6</sup> Witness 2 indicated that she has safety concerns being a witness/cooperator in this case. A copy of the messages was provided to the defense in discovery on April 11, 2023.

February 23, 2023:

February 27, 2023:

March 3, 2023:

The government filed a motion with affidavit under seal requesting that United States Magistrate Judge H. Kenneth Schroeder, Jr., set a Rule 48(b) dismissal date because his normal practice is to not set such dates. Magistrate Judge Schroeder issued a Text Order: "For the reasons set forth in the affidavit under seal, the Criminal Complaint shall be deemed dismissed without prejudice pursuant to Rule 48(b) [...] effective 4/9/2023."

March 7, 2023:

March 9, 2023:

March 14, 2023:

Witness 2 contacted the FBI at the advice of her attorney to report that rats had been thrown on her [mother's] car and her roommate's car. The FBI conducted follow-up interviews and responded to the location and observed the dead rat. Witness 2 reported that she was very scared after discovery of the second rat.<sup>11</sup>

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<sup>7</sup> A copy of this proffer report was provided to the defense on May 26, 2023, with 3500 material disclosures.

<sup>8</sup> A copy of this proffer report was provided to the defense on May 26, 2023, with 3500 material disclosures.

<sup>9</sup> A copy of this proffer report was provided to the defense on May 26, 2023, with 3500 material disclosures.

<sup>10</sup> A copy of this transcript was provided to the defense on April 11, 2023.

<sup>11</sup> A redacted copy of this FBI report was provided and attached as an exhibit on June 5, 2023, see Dkt. 503-1 (sealed), Exhibit A.



- March 21, 2023: Witness 2 texted the FBI agent, in part, that she was scared and that she believed her dog had been assaulted.<sup>12</sup>
- March 21, 2023: The FBI canvassed several pet stores and confirmed that pet stores do not sell rats that look like the rats that were left at Witness 1's house [on her mother and roommate's vehicles].<sup>13</sup>
- March 23, 2023: A Grand Jury in the Western District of New York returned an indictment charging Gerace with four counts related to witness tampering and drug distribution. *See Case No. 23-CR-37, Dkt. 1.*
- March 27, 2023: Judge Sinatra detained Gerace. *See Case No. 23-CR37, Dkt. 8.*
- March 28, 2023: The FBI interviewed a witness to the discovery of the dead rats and stated, in pertinent part, that Witness 2 "looked like she had seen a ghost," and was "pretty shook up" about the rats. Witness

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<sup>12</sup> A redacted copy of this FBI report was provided and attached as an exhibit on June 5, 2023, *see* Dkt. 503-1 (sealed), Exhibit B.

<sup>13</sup> A copy of this FBI report was provided and attached as an exhibit on June 5, 2023, *see* Dkt. 503-1 (sealed), Exhibit C.

April 3, 2023:

2 stated that it could be because she was “talking with the FBI.”<sup>14</sup> Witness 2 entered a Pre-Trial Diversion agreement with the United States Attorney’s Office and the United States Probation Office. That same day, Witness 2 executed a formal cooperation agreement with the United States Attorney’s Office.

On April 6, 2023:

United States Magistrate Judge H. Kenneth Schroeder, Jr., signed an Order of Dismissal, and dismissed Witness 2’s criminal complaint pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. *See* \_\_\_\_\_, Doc. No. 8. Anyone with access to Pacer could have accessed Witness 2’s docket and observed that her complaint was dismissed.

May 10, 2023:

The United States Attorney’s Office filed its witness list, under seal and pursuant to a protective order, in case number 19-CR-227 and 23-CR-37, listing Witness 2 as a government witness for trial. Under the terms of the protective order, Gerace’s attorney was not permitted to share the names of government witnesses with Gerace. That same day, the United States Attorney’s Office provided Gerace’s attorney with Witness 2’s proffer statements as 3500 material/Jencks Act Material. The protective order in place did not permit Gerace access to that material however, as set forth above, Witness 2’s cooperation was evident based upon the detention hearings that culminated in Gerace’s pretrial detention on March 27, 2023.

May 30, 2023:

During Oral Argument on the defendant’s first motion for reconsideration of detention (*see* Dkt. 491), Judge Sinatra observed regarding the dead rats, in part: “I think it’s probably not a random thing. So we either have Mr. Gerace is involved and knew about it or he didn’t or you’ve got somebody who is acting on his own or her own, right? [...] I can’t look at it in a vacuum, Mr. Soehnlein. Don’t I need to look at what the Government is telling me by way of proffer against the backdrop of everything else I’m hearing in terms of the charged conduct in the 23 indictment, in connection with the outreach from some lawyer to this individual, etcetera? Don’t I look at all these facts together? *See* Tr. 05/31/23 at 21-22.

June 6, 2023:

Judge Sinatra denied defendant Gerace’s motion for reconsideration of detention. *See* Dkt. 504.

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<sup>14</sup> A redacted copy of this FBI report was provided and attached as an exhibit on June 5, 2023, *see* Dkt. 503-1 (sealed), Exhibit D.

July 7, 2023<sup>15</sup>:

The government received information from a witness who provided the following information:

August 2, 2023:

Witness 2 was found dead.

### **ARGUMENT**

The defendant's motion, which simply regurgitates past arguments previously rejected, does not meet the strict threshold required on a motion for reconsideration. Contrary to defense claims, there was no information that Judge Sinatra overlooked or undervalued in reaching its sound conclusion that the defendant should be detained. Since defendant Gerace

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<sup>15</sup> This is new information since the time Judge Sinatra ordered defendant Gerace detained. The witness is a protected witness, *see* Dkt. 347 and #202 on the Government's Amended Witness List filed under seal on June 16, 2023.

has been detained, there has not been (1) an intervening change in controlling law; (2) new evidence; or (3) the need to correct a clear error of law to prevent manifest injustice. *Virgin Atl. Airways, Ltd.*, 956 F.2d at 1255. To the contrary, the government has proffered additional information circumstantially establishing that defendant Gerace may be engaged in or planning additional witness tampering activity, and that he has stated to a witness that “all snitches should die!”

First, the defendant’s claim, unsupported by any case law, that Judge Sinatra did not make written findings of fact is belied by the record. *See* Case No. 23-CR-37, Dkt. 8. Indeed, Judge Sinatra issued his Order of Detention Pending Trial on the standard District Court form AO 472. The Order contained his finding of facts by boxes checked for findings: (i) that there are applicable rebuttable presumptions that the defendant is a flight risk and danger to the community; (ii) that the defendant has rebutted the presumption but that detention is still warranted; (iii) that the Court found that the Government has proven “By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person in the community; (iv) that “[i]n addition to any findings made on the record at the hearing, the reasons for detention include the following: weight of the evidence against the defendant is strong, subject to lengthy period of incarceration if convicted; prior criminal history (emphasis added);” and, (v) the Government’s detailed proffer- see transcripts from 3/24/2023 and 3/27/23 for analysis.” Nothing more was required of Judge Sinatra, and the defendant has not provided any authority to the contrary. In fact, Judge Sinatra did more than necessary by issuing written findings, and by making findings on the record as memorialized in the transcripts of March 24 and 27, 2023. *See also United States v. English*, 629 F.3d 311, 321 (2d Cir. 2011) (“the district

court's findings and its reasons for revocation and detention ... may be embodied in a transcript of the proceedings[.]"). Additionally, on June 6, 203, after cases 19-CR-227 and 23-CR-37 were joined for trial, Judge Sinatra issued another D&O detaining the defendant, *see* Dkt. 504, but the defendant ignored this D&O entirely. Accordingly, the defendant's claim that Judge Sinatra committed clear error and failed to make findings in support of detention lacks merit.

Second, as the defendant acknowledges, the government was permitted to proceed by proffer. *See Lafontaine, supra, see also United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995) ("The rules of evidence do not apply in a detention hearing. Further, the government may proceed by proffer.") (citations omitted). However, without additional legal authority or analysis, the defendant claims the government's proffer and Judge Sinatra's reliance upon it offended Due Process. The defendant's claims lack merit.

The government supported its proffer with information from

Witness 2, who sent the messages, and Witness 1, whose account was utilized to send the messages. The government corroborated its witnesses with text

messages (namely, Attorney Cohen utilizing Attorney Michael Bly to circumvent

's attorney of record, Michael D'Amico), Facebook messages, and evidence that Gerace considered a "snitch." A copy of December 3, 2020,

testimony is attached hereto and incorporated by reference as **Exhibit F**. Additionally, the

government proffered information that was assaulted following a secure interview with

federal law enforcement at a local police department, and that Gerace had a relationship with

a detective involved in arrest and transport to the local police department.

Furthermore, the government proffered considerable information about how defendant Gerace utilized his contacts with former New York State Supreme Court Judge Michalski to disadvantage others, and proffered text messages exchanged between Michalski and Gerace during its proffer. All of this information appropriately caused Judge Sinatra to conclude, in part, the following:

Also new to me is the Government's proffer about Mr. Gerace referring to the victim witness as a snitch prior to the November 19, 2019 alleged conduct, and in real time as well.

I still have some concerns as well about the Government's proffer about Mr. Gerace's apparent willingness to use his contacts in the legal system to improperly disadvantage those perceived as being against him.

And there, in part, I'm concerned about [two incidents] that I heard about on Friday as well.

The cocaine and drug supplying and prostitution [proffers] aren't good facts either.

*See* Dkt. 504, at 2. Notably, the information available to this Court is further amplified by the additional contained in the Government's Pre-Trial Memorandum and Motions in Limine, *see* Dkt. 441, and the government's brief regarding the admissibility of IOC evidence, *see* Dkts. 533 [redacted public version] and 528 [unredacted sealed version], which are incorporated herein by reference as though set forth fully herein.

The defendant's cherry-picked excerpts from the transcripts do not change the calculus, claims impugning the government, and purported inconsistencies between witnesses do not alter the calculus, or the strength of the government's proof. On the one hand, Gerace targeted [REDACTED], who is an indigent woman with limited means, with a civil lawsuit in an effort to scare her, silence her, and in an effort to circumvent the federal criminal grand jury and discovery procedures. On the other hand, he identified her as a "snitch" to others loyal to him and she has reported that she has been physically assaulted by one individual

associated with Gerace (before the Facebook threats were made). Additionally, a Federal Grand Jury determined that she was threatened by Gerace with the help of two other females who, at one time, were loyal to him. For the purposes of the Bail Reform Act, “an indictment returned by a duly constituted and unbiased grand jury satisfies the Constitution as to the existence of probable cause that the defendant committed the crimes enumerated therein.”

*United States v. Contreras*, 776 F.2d 51, 54 (2d Cir. 1985)

It is well-settled that a judge “retains the responsibility for assessing the reliability and accuracy of the government's information, whether presented by proffer or by direct proof. Of course, a detention hearing is not to serve as a mini-trial, as discussed above, or as a discovery tool for the defendant. Accordingly, a government proffer need not always spell out in precise detail how the government will prove its case at trial, nor specify exactly what sources it will use. *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986). Here, the government spelled out its proof in precise detail, and the defendant's claim of a Due Process violation in the manner in which information was presented by the government, or relied upon by Judge Sinatra, lack merit. Simply put, Judge Sinatra's acceptance and reliance upon the government's detailed proffers did not offend Due Process, and defendant Gerace has failed to reach the high threshold required for this Court to reconsider Judge Sinatra's decision.

**I. GERACE HAS A PATTERN OF TAMPERING AND INTIMIDATING WITNESSES WHILE ON RELEASE.**

As set forth above, since defendant Gerace realized that he was a target of this federal investigation, he and others have engaged in a pattern of attempting to obstruct justice by intimidating and tampering with witnesses. Courts have recognized the inherent power of a

trial court to remand a defendant, such as defendant Gerace, without bail before trial when such defendant jeopardizes the court's processes by threatening government witnesses. *United States v. Payden*, 768 F.2d 487, 490 (2d Cir. 1985)

First, after Gerace deduced who several of the witnesses were, he used his vast financial resources to file a civil lawsuit against them in an effort to silence and intimidate them and to dissuade them from cooperating with law enforcement or appearing at court proceedings. Gerace, a wealthy strip club owner who lives in a large home in Clarence, New York, filed the lawsuit against two women with little means and no assets. The fact that Gerace hired an attorney to file a lawsuit to obtain an uncollectable judgment demonstrates its nefarious purpose, that is, to intimidate, harass, and deter the witnesses. In *United States v. Camick*, the Court affirmed a conviction for witness retaliation pursuant to Title 18, United States Code, Section 1513(e) whereupon a defendant filed a civil lawsuit against his former girlfriend after learning his former girlfriend had become a witness against him. 796 F.3d 1206 (10th Cir. 2015). The Court in *Camick* observed that “to sustain a conviction for obstruction of justice under § 1513(e), the Government was required to show (1) Mr. Camick knowingly took an action with intent to retaliate, (2) his action harmed Ms. Wattley (emotionally, economically, or otherwise), and (3) his retaliation was motivated by Ms. Wattley's cooperation with law enforcement,” and affirmed the conviction predicated upon that the circumstances surrounding the filing of the civil lawsuit. *Camick*, 796 F.3d at 1220. Defendant Gerace, while not yet charged with this conduct federally, engaged in the same behavior here as to both , and these facts were appropriately proffered by the government and considered by Judge Sinatra.

Second, as referenced above, an associate of Gerace assaulted shortly after she provided information to the authorities about Gerace. To the extent there is not direct evidence that Gerace orchestrated the assault, the event nevertheless underscores his dangerousness. In particular, if Gerace did not direct the assault, it demonstrates that loyal associates of Gerace would act on his behalf to harm or threaten witnesses on sight---even in the absence of a direct instruction.

Third, at the time the threatening Facebook messages were sent were loyal to Gerace. The Facebook threats exemplify Gerace's ability to motivate and utilize others to tamper with witnesses. Moreover, the messages were sent while Gerace was in the comfort of his own home and involved use of another person's phone and Facebook account. Furthermore, the government recently interviewed an additional witness who provided corroborating details that Gerace is responsible for the Facebook threats.<sup>16</sup> Indeed, while a grand jury determined that there is probable cause to believe Gerace is responsible for the threats, *see Case No. 23-CR-37-JLS*, and its probable cause finding is controlling, the availability of an additional witness since the time of the March 24 and 27, 2023, detention hearings further buttresses the strength of the government's witness tampering case.

Fourth, as detailed above, circumstantial evidence strongly compels the conclusion that Gerace was behind the dead rats that were placed at Witness 2's residence, and the purpose was to intimidate Witness 2 and prevent her from continuing to be a cooperating witness as the case proceeds to trial.

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<sup>16</sup> This witness' identity will remain protected, *see Protected Witness 12, supra*.

**a. The Court should weigh the evidence and find Gerace responsible for the dead rats.**

As the above timeline demonstrates, Witness 2 was unbothered from November 19, 2019, when she aided Gerace's efforts to threaten [REDACTED] until after she began proffering with the government in late February 2023. It was not until after her complaint was unsealed that Gerace, through his attorney Cohen, reached out to another attorney to send messages to Witness 2. Moreover, the Gerace defense team knew full well that Witness 2 was represented by her current attorney [and not the attorney that they asked to contact Witness 2] because (a) the complaint charging Witness 2 [REDACTED] was publicly docketed and her attorney's name was readily available on Pacer, and (b) Gerace's attorney had been in contact with Witness 2's actual attorney attempting to arrange an interview of Witness 2 on Gerace's behalf.<sup>17</sup>

Ultimately, as confirmed by her attorney, Witness 2 declined to be interviewed by the Gerace defense team. Thereafter, the criminal complaint was unsealed. The criminal complaint established that Witness 2 and Gerace were responsible for threatening [REDACTED]. After that, the government filed a motion upon sealed affidavit to adjourn the complaint's dismissal deadline. Based upon the above, Gerace deduced that Witness 2 was cooperating with the government against him. From that point on, Witness 2 was no longer beholden to Gerace and at that point dead rats started showing up at Witness 2's house.

Indeed, the timing of the appearance of dead rats was no coincidence. After Gerace deduced Witness 2 was no longer his loyal servant, circumstances establish that he went into

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<sup>17</sup> These details have been confirmed by Witness 2's attorney.

attack mode in order to intimidate the witness. Gerace's reaction to Witness 2 cooperating was no different than how he attacked other witnesses through filing a civil lawsuit, or by having proxies send threats to a witness via Facebook. Indeed, the foregoing is it's indicative of Gerace utilizing, to use his words, his "long reach," to tamper with witnesses.

Importantly, "rat"<sup>18</sup> and "nark" are terms that Witness 2 used when sending Facebook threats to . Both are derogatory terms for individuals cooperating with law enforcement and are designed to scare and intimidate witnesses. Dead rats being left at Witness 2's house sent an even stronger message. Gerace and Witness 2 have been long-time friends and confidants. Gerace knows Witness 2 had highly damaging information about him and his criminal activity.

. Notwithstanding the fact that the government has been unable to identify specifically who put the dead rats on Witness 2's mother's car,<sup>19</sup> and her roommate's car, the clear implication is undeniable. The message was that "we know you are a rat and if you continue to cooperate against Gerace you will be killed."

Defendant Gerace would benefit significantly from Witness 2's unavailability. In addition to providing information about Gerace's involvement in witness tampering, Witness 2 proffered, and would have testified at trial about Gerace's

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<sup>18</sup> It was misspelled ray, but the letter "y" is right next to the letter "t" on a keyboard or phone screen.

<sup>19</sup> The FBI has canvassed the neighborhood and to date has been unable to identify a witness who observed the rats being placed on the vehicles.

admissions that Bongiovanni was protecting Gerace and PGC. Witness 2's testimony would have been crippling as to Gerace.

As set forth above, on July 7, 2023, the government received information from a witness further establishing that defendant Gerace made statements

On August 2, 2023, Witness 2 was found dead. Her death remains under investigation,

Defendant Gerace is a danger to the community. The only thing that has changed since Judge Sinatra arrived twice at that conclusion is that defendant Gerace has been indicted for additional criminal conduct in Case No. 23-CR-60, a key witness against Gerace, who previously had dead rats placed on her mother's vehicle at her house, has been found dead, and a witness reported that Gerace has stated,

The facts and circumstances reveal that defendant Gerace has engaged in extensive witness tampering, and that he plans to engage in more of it undetected. Accordingly, releasing Gerace on any conditions is wholly inadequate and inappropriate.

**II. ADDITIONAL INFORMATION AND ANALYSIS PERTAINING THE FACTORS SET FORTH IN 18 U.S.C. § 3142(G)**

**(1) The nature and circumstances of the charged offenses**

The nature and circumstances of the charged offense weigh heavily in favor of detention.

In Case No. 19-CR-227, Gerace is facing up to life imprisonment for bribing a DEA agent, conspiring to distribute and distribution of controlled substances, maintaining a drug-involved premises, and for victimizing vulnerable women by exploiting their drug addictions and leveraging the power imbalance between them in order to coerce them into engaging in commercial sex acts with him, his friends, and associates.

In Case No. 23-CR-37, Gerace is facing up to 20 years of imprisonment for distributing cocaine and threatening a woman he perceived to be an important witness against him in Case No. 19-CR-227. Gerace's conduct strikes at the heart of the integrity of the proceedings in this case and compels the conclusion he should remain detained. *See, Payden*, 768 F.2d at 490.

Accordingly, this factor weighs heavily in favor of detention.

**(2) The weight of the evidence against the person<sup>20</sup>**

The weight of the evidence against this defendant is very strong. The evidence in this case consists of well-over 100 witnesses, including women Gerace and others exploited and victimized; dozens of exhibits; incriminating text messages from Gerace's phone; and volumes of other evidence. The government has previously proffered text messages from Gerace's phone between Gerace and deceased Judge Michalski, and another text message exchange, dated October 16, 2017, indicative of sex trafficking as contained from Gerace's stated:

**Gerace:        "You took one of my top weekend girls"**

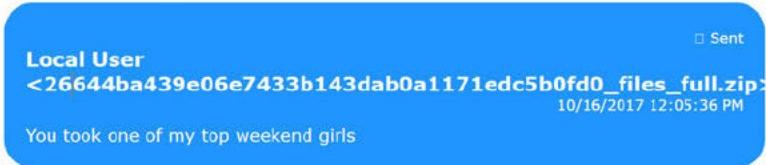
**Other:        "And she does anal...lol<sup>21</sup>**

Based upon the information set forth in the Second Superseding Indictment in Case No. 19-CR-227, Indictment 23-CR-37, the Government's Pre-Trial Memorandum (see Dkt. 441 previously filed under seal), the evidence proffered by the government on March 24, March 27, and May 31, 2023, and as detailed herein and in the government's prior the

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<sup>20</sup> This is a factor that the U.S. Probation Department does not take into consideration when making its recommendations.

<sup>21</sup> Excerpt of Gerace phone extraction:



evidence is very strong and this factor weighs heavily in favor of detention.

**(3) The history and characteristics of the person, including such matters as the person's family ties, employment history, length of residence in the community, criminal history, and record concerning appearance at court proceedings**

The defendant has a prior federal felony convicted felon for a telemarketing fraud scheme wherein he victimized a myriad of victims. *See* Case No. 00-CR-9, Plea Agreement, Dkt. 165. The defendant admitted that he was “an organizer, manager, and supervisor int eh criminal activity[.]” *Id.* at ¶ 9. The defendant violated his supervised release conditions in that case by using drugs and working at PGC.

The defendant has a history of lying to U.S. Probation in both his prior federal case and upon arrest in this case. Accordingly, to the extent this Court would need to rely upon representations by the defendant that he would adhere to conditions set—the defendant’s representations are unworthy of belief. The Court should not trust the defendant to adhere to his word. In prior court appearances, defense counsel has stated that the defendant is on trial for his life. This Court should consider the cost-benefit analysis from the defendant’s perspective. The risk of tampering with a witness and getting caught (resulting in a remand pending trial) – versus the reward of successfully tampering with witnesses and preventing them from testifying against him at trial (avoiding a potential life sentence). The defendant has every motive to continue tampering with witnesses should he be released on any conditions.

The defendant also has a history of abusing women in domestic incidents, as previously proffered by the government, and he was convicted of assault based upon one of the incidents involving his ex-wife.

Further, the defendant has engaged in criminal conduct while on pre-trial release, including EIDL loan fraud, which culminated in an Indictment in Case No. 23-CR-60, and as detailed above and in prior proffers his history includes acts of witness tampering and intimidation. Moreover, he has boasted about having law enforcement and judicial contacts and has described himself to one witness as untouchable. The information previously proffered to the Court corroborates and supports the defendant's boasts to a witness regarding his law enforcement and judicial contacts.

The defendant's employment at PGC is the location of many of the defendant's crimes. The defendant's employees include members of the Outlaws Motorcycle Club. One member of the Outlaws MC has previously made false and misleading statements on Gerace's behalf, as outlined in a prior filing in this case (*see* Dkt. 110), and law enforcement has long considered the Outlaws MC to be a dangerous and violent criminal organization. *See, e.g., United States v. Starrett*, 55 F.3d 1525, 1533 (11th Cir. 1995) ("The Outlaw Motorcycle Club (the "Outlaws") is one of the four largest national 'one-percenter' motorcycle clubs. Witnesses testified that the term 'one-percenter'—usually depicted by the symbol '1% er'—is motorcycle gang parlance meaning that the club is comprised of the one percent of the overall biker population who maintain total independence from society, and who are known to cause the most trouble, or 'raise the most hell.'"); *see also United States v. Bowman*, 302 F.3d 1228, 1231 (11th Cir. 2002) (former international president of the Outlaws convicted of racketeering,

conspiracy to murder, and various other offenses); *United States v. Lawson*, 535 F.3d 434, 438 (6th Cir. 2008), *as amended* (Oct. 9, 2008) (RICO prosecution relating to Outlaws MC “Green Region”, including a murder at a strip club.).

As to family ties, while the defendant’s family is located in this area, the defendant’s attorney recently made admissions to The Buffalo News concerning the defendant’s relatives, as follows:

“There is no way this jury is going to be able to unhear the term Italian organized crime,” Cohen said. They’re not going to unhear the term mafia. And they’re also not going to be able to unhear the fact that Peter does have relatives who were involved in that. Peter himself was never involved in Italian organized crime. But he has relatives who likely were.”

*See,* [https://buffalonews.com/news/local/crime-and-courts/ex-dea-agent-strip-club-owner-should-be-tried-together-judge-says/article\\_d2592222-e9ed-11ed-aec6-e7ad940a8f3e.html](https://buffalonews.com/news/local/crime-and-courts/ex-dea-agent-strip-club-owner-should-be-tried-together-judge-says/article_d2592222-e9ed-11ed-aec6-e7ad940a8f3e.html)  
(visited June 2, 2023).

Accordingly, this factor weighs heavily in favor of detention.

**(4) The nature and seriousness of any risk of danger if the person is released**

As set forth above, the defendant poses a danger to the community in a multitude of ways if released. Whether through witness tampering, fraud schemes, or drug and sex trafficking activity through PGC, the defendant is an undeniably danger if he is released pending trial. Simply put, where there is a will there is a way.

If the defendant is released, U.S. Probation does not have the ability to monitor his activity and meetings 24 hours per day, 7 days per week. Monitoring of his phone will not provide the content of any communications, or threats, and certainly will not detect whether he is using a burner phone. Monitoring his location will not work either. The defendant has committed and engaged in crimes using a computer, and a phone and social media account of a third-party. If the defendant is out of custody, where his calls, mail, and visits are unmonitored, it is much easier for him to carry on and to place actual or perceived witnesses in danger or in fear.

This Court should not indulge any offer by the defendant to create a de facto jail at his residence because doing so would be woefully insufficient to protect the community. Electronic monitoring, home incarceration, and assurances by the defendant and others that he will comply with conditions are insufficient in the face of the flight risk and danger he poses. *See, United States v. Mercedes*, 254 F.3d 433, 437 (2d Cir. 2001). Although the defendant has great means, “[t]he Bail Reform Act does not permit a two-tiered bail system in which defendants of lesser means are detained pending trial while wealthy defendants are released to self-funded private jails. It is a fundamental principle of fairness that the law protects ‘the interests of rich and poor criminals in equal scale, and its hand extends as far to each.’” *United Boustani*, 932 F.3d 79, 82 (2d Cir. 2019).

In jail, the content of his calls are monitored and recorded; his visits are documented; and his behavior is monitored and observed. At home – they are not.

Accordingly, this factor weighs heavily in favor of detention.

**III. THE DEFENDANT'S PRE-TRIAL DETENTION DOES NOT OFFEND DUE PROCESS OR HIS SIXTH AMENDMENT RIGHT TO COUNSEL.**

The defendant cannot engage in conduct that potentially delays his trial on one hand, such as seeking to terminate his lawyer, and then claim that the length of his pre-trial detention offends Due Process. The length of the defendant's pre-trial detention does not offend due process. Indeed, each relevant factor in the analysis weighs heavily in favor of the government. *United States v. Briggs*, 697 F.3d 98, 101 (2d Cir. 2012). First, as set forth above and in the government's prior arguments, the weight of the evidence justifying detention is strong. Second, the government is not responsible for the delay in the start of trial from June 21, 2023, August 14, 2023, October 23, 2023, or at any time. Indeed, in or about last November 2022, the government requested a trial date commencing in April 2023. Third, the amount of time the defendant has spent in pre-trial detention is insignificant. Defendants in the Western District of New York, and elsewhere, are often incarcerated for several years pre-trial before a trial commences. See *United States v. Hill*, 462 F. App'x 125, 127 (2d Cir. 2012) (collecting cases). Defendant Gerace has been detained less than one year.

Similarly, detention in a local jail does not deprive him of his right to counsel. In *United States v. Echeverri*, the court rejected a claim that a defendant's pre-trial detention "over 200 miles round trip" from the Eastern District of New York denied his right to counsel. No. 91-CR-885 (DRH), 1992 WL 81876, at \*2 (E.D.N.Y. Mar. 31, 1992); see also *United States v. Allick*, No. CRIM.A. 2011-020, 2012 WL 32630, at \*4-5 (D.V.I. Jan. 5, 2012) (no violation of Sixth Amendment right to counsel where counsel had to fly from the Virgin Islands to Puerto Rico where the defendant was detained); *United States v. Goudelock*, No. 18-CR-138 (JLS), 2022 WL 17687999, at \*5 (W.D.N.Y. Dec. 15, 2022) (denying motion for a new trial based

upon the defendant's claim that his pre-trial detention violated his Fourteenth Amendment rights and Sixth Amendment right to counsel) (Sinatra, J.).

### **CONCLUSION**

Based upon the foregoing, the Court should not reconsider Judge Sinatra's decision to detain the defendant and should reaffirm his finding that Gerace is a danger to the community. There has not been an intervening change in controlling law; new evidence; or the need to correct a clear error of law to prevent manifest injustice. To the contrary, there is additional compelling evidence that that the defendant is a danger to the community. All of the factors pursuant to Title 18, United States Code, Section 3142(g) weigh heavily in favor of detention, and the time that the defendant will have served in jail before trial neither violates Due Process, nor the defendant's Sixth Amendment right to counsel.

There is no condition or combination of conditions that will reasonably assure the appearance of the defendant and the safety of the community, and the defendant should remain detained pending trial.

DATED: Buffalo, New York, August 11, 2023.

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Chief, Public Integrity Section

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# EXHIBIT A

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF FLORIDA

3                   CASE NO. 21-MJ-06112-AOV

4                   UNITED STATES OF AMERICA,

Miami, Florida

5                   Plaintiff(s),

March 2, 2021

6                   vs.

7                   PETER GERACE, JR.,

8                   Defendant(s).

Pages 1 - 34

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9                   HEARING  
10                  TRANSCRIBED FROM DIGITAL AUDIO RECORDING  
11                  BEFORE THE HONORABLE ALICIA O. VALLE  
12                  UNITED STATES MAGISTRATE JUDGE

13                 APPEARANCES:

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7 Court Reporter  
8 jemancari@gmail.com

1 Thereupon,

2 the following proceedings were held:

3 THE DEPUTY CLERK: United States v. Peter Gerace, case  
4 No. 21 6112.

5 Counsel, please announce your appearance for the  
6 record.

7 MR. CULLINANE: Good afternoon, your Honor. Brendan  
8 Cullinane, assistant United States attorney from the Western  
9 District of New York, in Buffalo, New York, appearing on behalf  
10 of the government today.

11 MR. DANIELS: Joel Daniels.

12 THE COURT: Can you repeat all that. You turned into  
13 some mechanical robot talking.

14 MR. CULLINANE: I apologize, your Honor. My first  
15 name is Brendan, B-R-E-N-D-A-N, and my last name is Cullinane,  
16 C-U-L-L-I-N-A-N-E. I am an AUSA in the Western District of New  
17 York, in Buffalo, New York.

18 Thank you.

19 THE COURT: All right. Thank you.

20 And locally?

21 MR. DANIELS: Judge, I'm Joel Daniels, D-A-N-I-E-L-S.  
22 I am an attorney in Buffalo, New York, and I am appearing for  
23 Mr. Gerace.

24 Thank you.

25 THE COURT: Thank you.

1                   Mr. Daniels, have you filed a permanent appearance on  
2 this matter?

3                   MR. DANIELS: I haven't filed anything formally,  
4 Judge. I have been in touch with Mr. Cullinane and our  
5 representative of the government in this case. I have talked  
6 to them many times over the last 15 months.

7                   THE COURT: All right. We will take one step at a  
8 time.

9                   MR. DANIELS: Yes.

10                  THE COURT: Mr., is it Gerace or Gerace? How do I say  
11 your name?

12                  THE DEFENDANT: Gerace.

13                  THE COURT: Gerace?

14                  THE DEFENDANT: Gerace.

15                  THE COURT: Thank you, Mr. Gerace.

16                  Is that you? I just want to identify you in the  
17 cellblock and confirm that it is you.

18                  THE DEFENDANT: Yes, this is me.

19                  THE COURT: All right. Thank you.

20                  Secondly, Mr. Gerace, I want to confirm that I have  
21 your permission to proceed by Zoom. Normally we would all be  
22 in the courtroom, but because of the COVID virus, most of us  
23 are working, as you can see, from home, our offices.

24                  You do have the right to be in the courtroom if that  
25 is what you want, but I am asking whether or not you will allow

1 me to proceed by Zoom.

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Thank you.

4 Any objection, Mr. Daniels?

5 MR. DANIELS: None, your Honor.

6 THE COURT: Mr. Cullinane, from the government?

7 MR. CULLINANE: No objection. Thank you, Judge.

8 THE COURT: All right. Thank you very much.

9 Mr. Gerace, I want to advise you of your rights in  
10 connection with your appearance here this morning. If you have  
11 any questions, please let me know.

12 Also, if at any point during the proceedings there is  
13 any kind of equipment malfunction, you can't see me or hear us  
14 or whatever, wave your hands, get our attention, so that we can  
15 fix the problem. OK?

16 THE DEFENDANT: OK. Is my picture supposed to be up  
17 here?

18 THE COURT: We see you. I don't think you see  
19 yourself maybe.

20 THE DEFENDANT: OK. That is fine.

21 THE COURT: We see you.

22 THE DEFENDANT: OK.

23 THE COURT: Do you see our pictures?

24 THE DEFENDANT: I can see everybody, yes.

25 THE COURT: OK. Good. You know what you look like

1 anyway.

2 All right. So let me get back on a serious note to  
3 advise you of your charges and of your rights.

4 First of all, you have the right to remain silent.  
5 Anything that you say can be used against you by the  
6 government. You have the right to have a lawyer to represent  
7 you, and of course this morning we have Mr. Daniels here to  
8 represent you. But if you couldn't afford Mr. Daniels, the  
9 court would be able to appoint a lawyer for you at no cost if  
10 you met certain financial conditions. OK?

11 THE DEFENDANT: Yes.

12 THE COURT: Also, you have the right to have a bond  
13 hearing or a detention hearing if the government is requesting  
14 that you be detained pending trial. At that time either myself  
15 or another judge would make the decision of whether to release  
16 you on a monetary bond or detain you pending trial.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Also, if you are released on a monetary  
20 bond, you are nonetheless subject to arrest and revocation of  
21 release if you violate any of the non-monetary terms,  
22 conditions that I may impose along with the monetary bond.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Also, as I mentioned before, this

1 indictment -- has this been unsealed, Mr. Cullinane?

2 MR. CULLINANE: Yes, your Honor, it has been unsealed.

3 THE COURT: So you were arrested pursuant to an  
4 indictment that came out of the Western District of New York,  
5 not here locally in the Southern District of Florida. As a  
6 result, you are entitled to certain other procedural safeguards  
7 in addition to the rights that I just told you about, and I am  
8 going to advise you of those.

9 The first one is you have the right to have what's  
10 called an identity hearing. At that hearing the government  
11 would have to establish that you are in fact the Peter Gerace  
12 that the Western District of New York has charged. In other  
13 words, that they haven't gotten the wrong person. You can  
14 choose to have that hearing or you can choose to waive that  
15 hearing, and you can do that with the advice of your lawyer.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You also have the right to have, as I  
19 said, the bond hearing or the detention hearing here or in the  
20 Western District of New York. You and your lawyer have to  
21 decide where you want to have it. You only get one shot.

22 Understood?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And lastly, you have the right to explore  
25 resolving this case here in South Florida if you wanted to,

1 pursuant to Rule 20 of the criminal rules, but only if you  
2 wanted to plead guilty. If you wanted to go to trial on these  
3 charges, you have to do that in the Western District of New  
4 York.

5 Understood?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Also, if you wanted to plead guilty here  
8 and transfer the case to South Florida, that could only be done  
9 if both prosecutors in New York and Florida agree.

10 Understood?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Ultimately, you have the right to have the  
13 removal hearing here or you can choose to waive your right and  
14 go back and answer these charges forthwith in the Western  
15 District of New York.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. I am going to ask the  
19 prosecutor -- this is a very lengthy indictment and my printer  
20 ran out of paper at page 33, so I am going to ask the  
21 government to please summarize the charges in the indictment as  
22 well as the maximum penalties.

23 MR. CULLINANE: Thank you, Judge.

24 Judge, the defendant is charged as a defendant in this  
25 case along with a codefendant in a second superseding

1 indictment that contains 18 counts. Defendant Peter Gerace,  
2 Jr. is charged in five of those counts, and that includes  
3 Counts 2, 6, 7, 8 and 9.

4 Count 2 has a number of paragraphs, which I will  
5 summarize in general.

6 In Count 2, the defendant, Peter Gerace, Jr., along  
7 with his codefendant, are charged with conspiracy to defraud  
8 the United States, in violation of Title 18, United States  
9 Code, Section 371.

10 The allegations of the introduction of the indictment  
11 are repeated and re-alleged and incorporated by reference as if  
12 set forth fully here into Count 2.

13 Additionally, beginning in or about 2005 and  
14 continuing until in or about February 2019, the exact dates  
15 being unknown, in the Western District of New York and  
16 elsewhere, the defendants, including Peter Gerace, Jr. and  
17 Joseph Bongiovanni, did knowingly, willfully, and unlawfully  
18 combine, conspire, and agree together and with others, known  
19 and unknown, to defraud the United States and the DEA by  
20 interfering with and obstructing, by means of deceit, craft,  
21 and trickery, the lawful and legitimate governmental functions  
22 and rights of the DEA, that is, the right to have its business  
23 and its affairs, and the transaction of the official business  
24 of DEA, conducted honestly and impartially, free from  
25 corruption, fraud, improper and undue influence, dishonesty,

1       unlawful impairment and obstruction; and the right to the  
2       conscientious, loyal, faithful, disinterested and unbiased  
3       services, decisions, actions, and performance of his duties by  
4       the defendant, and in this case codefendant Joseph Bongiovanni,  
5       in his official capacity as a DEA special agent, free from  
6       corruption, impartiality, improper influence, bias, dishonesty  
7       and fraud in dealing with the DEA and other law enforcement  
8       agencies.

9                  Further, directly and indirectly, corruptly to give,  
10          offer, and promise a thing of value to a public official, with  
11          intent to induce the performance of an official act and to  
12          induce a public official to do an act and to omit to do an act  
13          in violation of his lawful duties, as opportunities arose, in  
14          violation of Title 18, United States Code, Section  
15          201(b)(1)(C); and directly and indirectly, corruptly to demand,  
16          seek, receive, accept, and agree to receive and accept, a thing  
17          of value personally, in return for being influenced in the  
18          performance of an official act and for being induced to do an  
19          act and omit to do an act in violation of official duty, as  
20          opportunities arose, in violation of Title 18, United States  
21          Code, Sections 201(b)(2)(A) and 201(b)(2)(C).

22                  As indicated before, the manner and means in which the  
23          act allegedly occurred are described in paragraphs 3 through  
24          36.

25                  The defendant faces a term of imprisonment of not more

1 than five years, a fine of up to \$250,000 --

2 THE COURT: I'm sorry. Can you repeat that?

3 MR. CULLINANE: I'm sorry.

4 The defendant as charged faces a term of imprisonment  
5 of not more than five years, a fine of up to \$250,000, and a  
6 term of supervised release up to one year.

7 THE COURT: I'm sorry. That is on Counts 6 and 7?

8 MR. CULLINANE: Your Honor, that is on Count 2.

9 THE COURT: That was all the conspiracy.

10 MR. CULLINANE: Thank you, Judge.

11 Count 6, your Honor, is the next one, and that is  
12 paying a bribe to a public official.

13 As described in the indictment, beginning in or about  
14 2009 and continuing until on or about June 6, 2019, in the  
15 Western District of New York, the defendant, Peter Gerace, Jr.,  
16 did, directly and indirectly, corruptly give, offer, and  
17 promise a thing of value to a public official, namely, a DEA  
18 special agent, with intent to induce the performance of an  
19 official act and to induce a public official to do an act and  
20 omit to do an act in violation of his lawful duty, as  
21 opportunities arose; that is, the defendant, Peter Gerace, Jr.,  
22 paid and facilitated bribe payments to Joseph Bongiovanni, a  
23 DEA special agent, in United States currency to, among other  
24 acts, falsely advise a Federal Bureau of Investigation special  
25 agent that the defendant, Peter Gerace, Jr., was a DEA

1 confidential source, thereby inducing the FBI special agent to  
2 abandon a narcotics investigation into the defendant Peter  
3 Gerace, Jr. and Pharaoh's nightclub; to create an official DEA  
4 document falsely stating that the defendant Peter Gerace, Jr.  
5 was a DEA source; to provide advice and information to the  
6 defendant Peter Gerace, Jr.; to help the defendant Peter  
7 Gerace, Jr. and Pharaoh's Gentlemen's Club avoid federal  
8 narcotics investigations; to induce Joseph Bongiovanni to use  
9 his position as a DEA special agent to make statements to his  
10 coworker, his fellow DEA special agent, to dissuade and  
11 discourage the fellow DEA special agent from investigating the  
12 defendant Peter Gerace, Jr. and Pharaoh's; to make false and  
13 misleading statements to other members of law enforcement; to  
14 provide information about law enforcement methods and  
15 techniques; to help such drug trafficking activities continue;  
16 and to make false statements in official DEA memoranda in order  
17 to minimize the relationship between Bongiovanni and the  
18 defendant Peter Gerace, Jr. as a means to conceal their  
19 conspiratorial relationship, all in violation of Title 18,  
20 United States Code, Sections 201(b)(1)(A) and Section  
21 201(b)(1)(C).

22 As charged in Count 6, the defendant faces a term of  
23 imprisonment of not more than 15 years, a fine of up to  
24 \$250,000, and a term of supervised release up to three years.

25 Count 7 charges the defendant, Peter Gerace, Jr., with

1 maintaining a drug-involved premises.

2                 As described in the second superseding indictment,  
3 beginning in or about 2006 and continuing until on or about  
4 December 12, 2019, in the Western District of New York, the  
5 defendant, Peter Gerace, Jr., did knowingly, intentionally, and  
6 unlawfully use and maintain a place, that is, the premises  
7 known as Pharaoh's Gentlemen's Club, located at 999 Aero Drive,  
8 Cheektowaga, New York, for the purpose of manufacturing,  
9 distributing, and using cocaine, cocaine base, methamphetamine  
10 and amphetamine, also known as Adderall, Schedule II controlled  
11 substances, and marijuana and heroin, Schedule I controlled  
12 substances, all in violation of Title 21, United States Code,  
13 Section 856(a)(1) and Title 18, United States Code, Section 2.

14                 As for Count 7, the defendant faces a term of  
15 imprisonment of not more than 20 years, a fine of up to  
16 \$250,000, and a term of supervised release of up to three  
17 years.

18                 Count 8 charges the defendant with conspiracy to  
19 distribute controlled substances.

20                 As described in the second superseding indictment,  
21 beginning in or about 2009 and continuing until in or about  
22 February 2019, in the Western District of New York, the  
23 defendants, Joseph Bongiovanni and Peter Gerace, Jr., did  
24 knowingly, willfully, and unlawfully combine, conspire and  
25 agree together and with others, known and unknown, to commit

1 the following offenses, that is, to possess with intent to  
2 distribute and to distribute cocaine, cocaine base,  
3 methamphetamine and amphetamine and marijuana and heroin, in  
4 violation of Title 21, United States Code, Sections 841(a)(1)  
5 and 841(b)(1)(C); and to knowingly, intentionally, and  
6 unlawfully use and maintain a place that is the premises known  
7 as Pharaoh's Gentlemen's Club, located at the 999 Aero Drive,  
8 in Cheektowaga, New York, for the purpose of manufacturing,  
9 distributing, and using cocaine, cocaine base, methamphetamine  
10 and amphetamine and marijuana and heroin, all in violation of  
11 Title 21, United States Code, Section 846.

12 As for Count 8, the defendant faces a term of  
13 imprisonment of not more than 20 years, a fine of up to \$1  
14 million, and a term of supervised release of at least three  
15 years.

16 Finally, your Honor, the defendant is charged in Count  
17 9 with conspiracy to commit sex trafficking.

18 As described in the second superseding indictment,  
19 beginning in or about 2009 and continuing to in or about 2018,  
20 in the Western District of New York, the defendant, Peter  
21 Gerace, Jr., did knowingly, willfully, and unlawfully combine,  
22 conspire, and agree with others to knowingly recruit, entice,  
23 harbor, transport, provide, obtain, and maintain by any means,  
24 in and affecting interstate and foreign commerce, persons, and  
25 to benefit, financially and by receiving anything of value,

1 from participation in a venture which has engaged in such acts,  
2 knowing and in reckless disregard of the fact that means of  
3 force, fraud, and coercion, and a combination of such means,  
4 would be used to cause such persons to engage in a commercial  
5 sex act, in violation of Title 18, United States Code, Sections  
6 1591(a) and 1591(b)(1), all in violation of Title 18, United  
7 States Code, Section 1594(c).

8 As for this count, Count 9, the defendant faces a term  
9 of imprisonment of not less than 15 years and up to life, a  
10 fine of up to \$250,000, and a term of supervised release of at  
11 least three years.

12 THE COURT: Thank you very much.

13 Mr. Gerace, did you understand everything the  
14 government said about the maximum penalties for these offenses?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. I can summarize them for you  
17 if you like.

18 Would you like me to do that --

19 THE DEFENDANT: No.

20 THE COURT: -- or you understood?

21 MR. DANIELS: Not necessary.

22 THE DEFENDANT: No, I understood.

23 THE COURT: All right. Thank you very much.

24 What is the government's position on bond?

25 MR. CULLINANE: Your Honor, at this time the

1 government has received the Pretrial Services report and,  
2 although it recommends detention, the government at this time  
3 will move for an order setting conditions of release for the  
4 defendant, many of which I've already discussed with  
5 defendant's counsel prior to this appearance.

6 THE COURT: Thank you.

7 Melania, did you send me a Pretrial Services report on  
8 this one?

9 PRETRIAL SERVICES OFFICER: Yes, your Honor. Yolanda  
10 sent it to the court.

11 Do you need me to resend it?

12 THE COURT: Yes, if you don't mind. I'm sorry.  
13 Unless this is when I ran out of paper, I guess.

14 PRETRIAL SERVICES OFFICER: I just sent it, your  
15 Honor. Let me know if you received it.

16 THE COURT: All right. Thank you.

17 I'm sorry for the delay. Please wait for me.

18 (Pause)

19 THE COURT: Got it. Let me just print it out.

20 All right. I will be right back. We just have to go  
21 get it from the printer. Excuse me one second.

22 THE DEFENDANT: Thank you.

23 (Pause)

24 THE COURT: Mr. Gerace, this is also a removal  
25 hearing, so I'd like to hear from Mr. Daniels what they're

1 hoping to do in terms of identity hearing and removal before I  
2 go on to the bond.

3 MR. DANIELS: Judge, good morning. We would waive an  
4 identity hearing.

5 THE COURT: Mr. Daniels, can you speak up a little  
6 louder, please.

7 MR. DANIELS: I'm sorry, Judge. Is that better? I'm  
8 sorry. Can you hear me?

9 THE COURT: There is just a lot of noise in the  
10 cellblock which interferes.

11 MR. DANIELS: I'm sorry.

12 THE COURT: Hold on. That is OK. It happens.

13 MR. DANIELS: Judge, we will waive an identity hearing  
14 and we can proceed with the hearing. We would ask the court to  
15 consider --

16 THE COURT: I'm sorry. I keep hearing this squeaky  
17 chair that I can't hear you over.

18 Does anybody else hear it or am I going crazy?

19 MR. CULLINANE: I'm having a difficult time as well,  
20 Judge Valle.

21 PRETRIAL SERVICES OFFICER: I also hear it, Judge.

22 THE COURT: Thank you. I felt like I am going crazy.  
23 All right. Thank you.

24 Don't move whoever has the squeaky chair.

25 Mr. Daniels, if you could repeat yourself. I'm so

1 sorry to interrupt you.

2 MR. DANIELS: Of course. That is no problem, Judge.

3 We understand. This is what happens on Zoom. We all  
4 understand it and we have to adjust and live with it. There is  
5 nothing else we can do about it.

6 THE COURT: I think everybody has to be flexible  
7 nowadays, right.

8 MR. DANIELS: That is right. We are. We certainly  
9 are. Yes, Judge.

10 We have no objection to an identity hearing. Excuse  
11 me. We will waive an identity hearing. That is what I meant  
12 to say.

13 THE COURT: OK. Thank you.

14 In terms of bond, you were saying Mr. Gerace, that is  
15 when I went to get the Pretrial Services report.

16 I'm sorry. Mr. Cullinane.

17 MR. CULLINANE: Yes, your Honor. Yes, your Honor.

18 THE COURT: Sorry to butcher your name.

19 MR. CULLINANE: That is OK. Judge, yes. The  
20 government would ask for a number of conditions to be imposed  
21 here. We are not asking for a monetary bond of any kind, but  
22 we are asking that the court place a number of restrictions and  
23 conditions in place for an order setting conditions of release.

24 If I could be heard on that.

25 THE COURT: I'm sorry. So let's back up.

1           The reason I went to get the Pretrial Services report  
2 is because Pretrial Services is recommending detention. You're  
3 saying don't do that, we have an agreement, and release him and  
4 he is going to make his way back to the Western District, or  
5 what do you want?

6           MR. CULLINANE: That is correct, your Honor.

7           THE COURT: So what conditions are you proposing?

8           MR. CULLINANE: Thank you, your Honor. First we'd  
9 like to ask for electronic monitoring to be imposed, and we'd  
10 like that to be followed by a term of or an order for home  
11 confinement after he is returned back to the Western District  
12 of New York. I understand he is in custody right now and he  
13 may have been staying in a hotel, but we'd ask that he be  
14 ordered to immediately return while on electronic monitoring  
15 and be placed on home confinement.

16           We'd ask for no contact with his codefendant,  
17 coconspirators or victims.

18           We'd ask for, Judge, an order to be imposed that he  
19 stay away from Pharaoh's Gentlemen's Club, which is the  
20 establishment that was listed in the indictment and that I  
21 referenced a number of times. That is located at an address of  
22 999 Aero Drive, Aero spelled A-E-R-O, Drive, in Cheektowaga,  
23 New York, which is spelled C-H-E-E-K-T-O-W-A-G-A, New York.

24           An additional order, your Honor, asking him to stay  
25 away from any other clubs or establishments that could be

1 described as strip clubs or adult entertainment clubs.

2 We'd ask for, I believe, the standard condition asking  
3 for drug testing.

4 We'd ask that the defendant be required to surrender  
5 his passport, or it looks like a passport book that he has.

6 We'd ask for no alcohol, no permissible alcohol or  
7 drug use.

8 Finally, zero tolerance, your Honor.

9 THE COURT: What do you mean by "zero tolerance?"

10 MR. CULLINANE: Well, in this district sometimes, your  
11 Honor, we have individuals who may commit an infraction and  
12 some courts will impose what they cause zero tolerance, to say  
13 that if there is any infraction of any kind, the person will be  
14 ordered detained pursuant to a warrant and brought into custody  
15 at that time.

16 THE COURT: Mr. Daniels, any objections to any of the  
17 terms that the prosecutor has listed?

18 MR. DANIELS: Yes, Judge. I spoke to Mr. Cullinane  
19 and Mr. Tripe about those conditions. Just very briefly,  
20 Judge, in the way of background here, Mr. Gerace is 53 years  
21 old. He is divorced. He lives with his 14-year-old son. This  
22 investigation has been going on for a long time, at least 15  
23 months. He is a long-time resident of Buffalo. I think he was  
24 born and raised here.

25 Concerning electronic monitoring and home confinement

1 and staying out of Pharaoh's, Judge, respectfully, we would  
2 object to that. He is the owner of Pharaoh's and, as  
3 Mr. Cullinane rightly described it, it is a gentlemen's club.  
4 It opens around noon seven days a week and it stays open until  
5 sometimes 3, 4 until the morning. He is not there 70 percent  
6 of the time. He may go in sometimes around noon or 1 or 2:00  
7 in the afternoon and stay for a few hours and just do work in  
8 the office. That's all. He handles a lot of the paperwork and  
9 the business work, and it is a fairly busy place. But after  
10 that, Judge, he isn't there. He is not there in the evenings.

11 This is his business. This is what he has been  
12 running and owning for the last several years. The business  
13 was owned, I believe, by his mother before that. So  
14 respectfully, Judge, we ask that the court allow him to go to  
15 work. That is what he does. That is his only business and his  
16 only income.

17 As far as not having any contact with the codefendant  
18 or codefendants, we understand that, Judge. But not having any  
19 contact with victims, respectfully, we don't know who exactly  
20 the victims are.

21 As the court is aware, this is a very lengthy  
22 indictment. It was sealed. We had not had an opportunity to  
23 see it. It was just emailed to us, I believe, this morning.  
24 Hopefully I have enough paper in the printer so I can print it  
25 out, but we will review it as soon as we can. We just don't

1 know who those victims are.

2                   The remaining conditions, Judge, we understand and I  
3 am sure we can deal with them.

4                   THE COURT: Well, Mr. Daniels, it sounds to me like  
5 those are some major objections to the government's recommended  
6 bond. If that is the case, then I think you are going to have  
7 to make a decision whether you want to have a bond hearing here  
8 or with the judge in the Western District of New York, because  
9 obviously I am not going to make this decision because it  
10 sounds like you want a bond hearing, is what I'm hearing you  
11 say.

12                  MR. DANIELS: We don't want that, Judge. We are  
13 willing to go along with the government's recommendation. We  
14 appreciate them allowing him to be released, come back to  
15 Buffalo, and appear before a magistrate here, Judge. We were  
16 just opposing for the record some of the conditions that the  
17 government was requesting. But that is your decision, Judge.

18                  THE COURT: I think your client wants to say  
19 something.

20                  Do you want to speak to your lawyer, Mr. -- I'm sorry;  
21 I forgot your name now -- Gerace?

22                  MR. DANIELS: Judge, that is unnecessary. I don't  
23 have to speak to him about that now.

24                  THE COURT: OK. I'm sorry. I am a little confused  
25 right now. So do you want me to have a bond hearing or are you

1 waiving your right to have a bond hearing here and allowing the  
2 bond hearing to take place in the Western District of New York?

3 MR. DANIELS: Yes, Judge. We would ask that the court  
4 allow his release to come back here and we can address that  
5 issue here. We would agree that the government's -- sorry. We  
6 would agree with the government's recommendation for release,  
7 allow him to come back here, again with the conditions,  
8 Judge --

9 THE COURT: I'm sorry.

10 MR. DANIELS: I'm sorry, too, Judge.

11 THE COURT: It is actually not a squeaky chair. It  
12 sounds like it is the marshal's radio that we are hearing.

13 MR. DANIELS: That is the way it is. We understand  
14 that. We were just objecting for the record to some of the  
15 conditions that the government was proposing, and I assume  
16 those matters could be readdressed once we come back here to  
17 Buffalo. But we'd like to have him released and get back here  
18 as soon as he can, Judge.

19 Thank you.

20 THE COURT: From the government, anything else?

21 MR. CULLINANE: No, your Honor. Thank you.

22 THE COURT: All right. I understand -- I mean, I'm  
23 reviewing -- Tamisha, can you put me in a room with Melania,  
24 and I think Mr. Gerace wants to speak to his lawyer at this  
25 time. Maybe Mr. Daniels can call the marshal's cellblock and

1 they can speak.

2 THE DEPUTY CLERK: OK. I can provide him with the  
3 telephone number.

4 MR. DANIELS: Sure.

5 THE DEPUTY CLERK: Mr. Daniels, the number that you  
6 can reach Mr. Gerace is 954 area code 660-5823.

7 MR. DANIELS: Sure.

8 THE DEPUTY CLERK: Judge, just give me one moment.

9 THE COURT: Thank you.

10 (Pause)

11 THE DEPUTY CLERK: We are back on the record, Judge.

12 THE COURT: Thank you.

13 I took an opportunity to speak with Pretrial Services.

14 With reference to the sex trafficking charge in Count  
15 9, does that involve minors or is that adults?

16 MR. CULLINANE: Adults.

17 THE COURT: OK. Good. Clarification, because  
18 otherwise we would have to impose the Adam Walsh condition. So  
19 I wasn't sure about that.

20 MR. CULLINANE: You're correct, Judge. I checked the  
21 language again and it reflects the language involving force,  
22 fraud, and coercion, combination of such means, not the minor  
23 part.

24 Thank you, Judge.

25 THE COURT: OK. So no minors.

1 MR. CULLINANE: Correct.

2 THE COURT: All right. Thank you.

3 Well, this was an interesting case because but for the  
4 government's recommendation, this is a case where I think  
5 detention would be warranted. However, this is a case that  
6 emanates from the Western District of New York, and the  
7 prosecutor from the Western District of New York is here. So I  
8 am going to accept the recommended bond, to which I understand  
9 Mr. Daniels will probably oppose once they get into the Western  
10 District of New York. For now the bond will be set as follows.

11 I am going to order that the defendant be detained in  
12 home confinement with allowances only for court appearances,  
13 medical visits, attorney visits.

14 He will be having electronic monitoring, and  
15 specifically I'm referring to GPS location monitoring, services  
16 to be paid by the defendant.

17 The defendant is not to have any contact with any  
18 codefendant, in this case Mr. Bongiovanni, or any  
19 coconspirators or any victims in the case.

20 The defendant is not to visit Pharaoh's Gentlemen's  
21 Club at 999 Aero Drive in Cheektowaga, New York, in the Western  
22 District.

23 MR. DANIELS: Cheektowaga.

24 THE COURT: And not to visit any other strip clubs,  
25 adult entertainment clubs in the district. Not just in the

1 area, in the district.

2 The defendant is to submit to drug testing as required  
3 by Pretrial Services. He is to relinquish his passport to the  
4 Pretrial Services office and not obtain any new passport during  
5 the pendency of the case. He is also not to have any alcohol  
6 use or any illegal drug use.

7 I also need to know the address where he is staying  
8 here in Florida. Pretrial Services needs to contact him  
9 immediately.

10 The defendant is not to have any firearms or other  
11 dangerous weapons.

12 The travel, I am going to restrict it to the Western  
13 District of New York and the Southern District of Florida. He  
14 just needs to get himself up there. Other than that, travel  
15 will be limited to the Western District of New York.

16 Any other recommendations from Pretrial Services or  
17 the government?

18 Melania.

19 PRETRIAL SERVICES OFFICER: Your Honor, we would need  
20 the address to put it on the record or where he is staying and  
21 a phone number.

22 THE COURT: Mr. Daniels can provide that to you, I  
23 guess.

24 MR. DANIELS: I don't know it, but I would ask  
25 Mr. Gerace to provide that to Ms. Vasquez if she asks him,

1 Judge, if that is OK with the court.

2 THE COURT: Yes.

3 Mr. Gerace, can you please provide where you are  
4 staying, the location.

5 The GPS monitoring -- Melania, is that what you are  
6 asking? The GPS will be installed immediately?

7 PRETRIAL SERVICES OFFICER: That is correct, your  
8 Honor. Pretrial cases have to get installed within 24 hours.

9 MR. DANIELS: May I speak to Mr. Gerace, Judge?

10 THE COURT: Yes.

11 MR. DANIELS: Peter, where are you staying?

12 THE COURT: He's muted. There you go.

13 MR. DANIELS: Peter, where are you staying?

14 THE DEFENDANT: Right now I don't know. When I leave  
15 here -- they took my phone, so I don't know anybody's phone  
16 number except my parents' home phone. So when I leave here I  
17 am going to call my parents and tell them to call my friend  
18 Dan, who lives down here, and see if he can pick me up because  
19 I have nowhere to go.

20 MR. DANIELS: Where were you staying?

21 THE DEFENDANT: I was going to stay at the hotel, but  
22 this all happened. I never --

23 MR. DANIELS: You didn't check in.

24 THE DEFENDANT: It's gone now. I checked in but he  
25 checked me out.

1                   MR. DANIELS: Do you plan to stay with your friend  
2 down here, is that it?

3                   THE DEFENDANT: I am going to take a look as soon as I  
4 get out of here, I am going to take a look and see how fast I  
5 can get a plane out of here because my plane ticket is for  
6 Friday. I am going to see if I can get out sooner. I am going  
7 to see if I can get a nonstop flight.

8                   MR. DANIELS: Could you just mute him again, please,  
9 if that is possible.

10                  THE DEFENDANT: I'm sorry?

11                  MR. DANIELS: I am just asking the court if they could  
12 mute you for a moment and I can speak to Ms. Vasquez and the  
13 court. Thank you.

14                  May I speak to Ms. Vasquez about that, Judge?

15                  THE COURT: Yes. Go ahead.

16                  MR. DANIELS: Ms. Vasquez, could you speak to  
17 Mr. Gerace and find out where he is going to be staying so that  
18 you can set up whatever you need. You will be able to do that?

19                  PRETRIAL SERVICES OFFICER: You mean right now?

20                  MR. DANIELS: Well, at your convenience.

21                  PRETRIAL SERVICES OFFICER: Yes, we need something on  
22 the record.

23                  MR. DANIELS: OK.

24                  THE COURT: I think, on the record, the problem is,  
25 Melania, that he is saying he doesn't know what he is doing.

1                   So it is giving me quite a lot of pause. I think I am  
2 trying to bend over backwards to work with the government on  
3 the one hand and with the defense in terms of not holding him,  
4 but I think this case might be better suited for a bond  
5 hearing.

6                   MR. DANIELS: Judge, we'd like to waive that, not  
7 waive it in a sense, but I don't think we need a bond hearing.  
8 I am sure we can resolve this and we can provide Ms. Vasquez  
9 whatever it is that she is going to need. Perhaps if I  
10 could --

11                  THE COURT: He is not going to be released until she  
12 has the information that she requires.

13                  MR. DANIELS: Judge, can I have one minute, beg the  
14 indulgence --

15                  THE COURT: Yes, you may call him.

16                  MR. DANIELS: -- I will call him, and hopefully I can  
17 provide Ms. Vasquez and the court with whatever they need. I  
18 will call him right now.

19                  PRETRIAL SERVICES OFFICER: And a phone number, too,  
20 sir, please.

21                  THE COURT: Bottom line is he will not be released  
22 until she has a verifiable address and phone number.

23                  MR. DANIELS: We'll take care of that.

24                  I am going to call him right now, Judge. I'd ask the  
25 court not to mute me out because I don't know how to get back

1 on and unmute it. So I will just step out over on the side.

2 THE COURT: OK.

3 MR. DANIELS: Thank you. Thank you very much, Judge.

4 (Pause)

5 MR. DANIELS: Judge, thank you very much. I  
6 appreciate that. I know it is late and it's been a long  
7 morning for the court. Early afternoon.

8 He is staying with a friend in Plantation. I can get  
9 the phone number. If I could have Ms. Vasquez's number, I can  
10 call her directly, give her all the information, and we agree  
11 he will stay in custody until Ms. Vasquez is satisfied that she  
12 has all the information that she needs. Hopefully I can  
13 provide that to her within 15 minutes.

14 THE COURT: Melania, I think he wants a phone number  
15 from you where he can reach you.

16 PRETRIAL SERVICES OFFICER: Sorry, your Honor. I was  
17 using my headphones. I couldn't really hear.

18 It is (954) 769-5547.

19 MR. DANIELS: May I just repeat that back to you,  
20 Ms. Vasquez?

21 PRETRIAL SERVICES OFFICER: Sure.

22 MR. DANIELS: (954) 769-5547.

23 PRETRIAL SERVICES OFFICER: That's correct.

24 MR. DANIELS: I am going to make a couple of phone  
25 calls. I will get the phone, I will get the address, I will

1 get the phone number, and hopefully we can get done whatever we  
2 have to do.

3 THE COURT: All right. I take it that, just to recap  
4 where we are, you are waiving the identity hearing, I will  
5 enter the order of removal, which has to be signed, and the  
6 bond has been set.

7 MR. DANIELS: Yes.

8 THE COURT: Any other conditions of bond that I  
9 missed, Mr. Cullinane?

10 MR. CULLINANE: Thank you, Judge. Just two issues I'd  
11 like to address. I may have missed one of them.

12 The only thing I wanted to note is, just after meeting  
13 with Ms. Vasquez that the court has ordered him to immediately  
14 or quickly thereafter return to the Western District of New  
15 York.

16 THE COURT: Yes.

17 MR. CULLINANE: Finally, Judge, there was a concern  
18 from Mr. Daniels about the identity of certain people. One  
19 person I would like to address for the record that he stay away  
20 from and have no contact with, initiate no contact with, is an  
21 individual woman named Katrina, that is spelled K-A-T-R-I-N-A,  
22 and her last name is Nigro, N-I-G-R-O. She was formerly  
23 referred to as Katrina Gerace.

24 MR. DANIELS: We know who she is, Judge.

25 THE COURT: All right.

1 MR. DANIELS: We will stay away from her.

2 THE COURT: To the extent that there are other victims  
3 identified, it will be the government's responsibility to share  
4 those names with the Pretrial Services officer so that they can  
5 enforce that restriction.

6 MR. CULLINANE: Thank you, Judge Valle.

7 THE COURT: Anything further from either side?

8 MR. CULLINANE: Nothing further from the government,  
9 your Honor.

10 THE COURT: Mr. Daniels, anything further?

11 MR. DANIELS: No, nothing. Thank you very much.  
12 Thank you.

13 THE COURT: So I will or we will have to sign the  
14 paperwork, Tamisha, for the waiver.

15 MR. DANIELS: Yes. He will sign whatever he has to  
16 sign, Judge.

17 THE DEPUTY CLERK: I can email it to defense counsel.

18 I noted for the record that it was verbally waived.

19 THE COURT: OK. Great.

20 PRETRIAL SERVICES OFFICER: Your Honor, just a quick  
21 question. Did the court impose a no firearms restriction in  
22 this case?

23 THE COURT: I did, didn't I?

24 MR. CULLINANE: Yes, your Honor.

25 THE DEPUTY CLERK: Yes, you did.

1 PRETRIAL SERVICES OFFICER: Thank you, Judge.

2 THE COURT: Yes, I did. I said no firearms or other  
3 dangerous weapons, surrender the passport, travel restriction  
4 to the Western District of New York and Florida only for  
5 purposes of getting out of here. After that, only the Western  
6 District of New York.

7 THE DEFENDANT: Yes.

8 THE COURT: Also, he should notify Pretrial Services  
9 when he will be traveling out to the Western District.

10 All right. Anything further?

11 MR. DANIELS: No, Judge.

12 THE COURT: This is one of the messiest removal  
13 hearings we have had.

14 THE DEFENDANT: Thank you.

15 MR. CULLINANE: Our apologies, and we owe you a ream  
16 of paper. So thank you, Judge, for your time today.

17 THE COURT: You're very welcome.

18 All right, everyone.

19 Mr. Gerace, I just want to address you. One of the  
20 things that the government asked for was this zero tolerance  
21 order. We don't usually enter it in this district, but  
22 basically what I do in this district is tell the defendants, as  
23 I'm about to tell you, how lucky you are because under normal  
24 circumstances Pretrial was recommending that you would be  
25 detained, and the charges in this case are so substantial that

1 but for the government's recommendation you would be detained.

2 So my pitch to you is understand how lucky you are to  
3 be released. Even though it is an inconvenience that you might  
4 not be able to go to Pharaoh's, you wouldn't be able to go to  
5 Pharaoh's if you were in jail either. So look at it that way.

6 Being home detained is certainly an advantage that the  
7 government has given you an opportunity, but don't blow it.  
8 What I'm saying to is if you fail to abide by any of the  
9 conditions in my bond, the bond will be revoked and you will go  
10 to jail pending trial.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. Thank you.

14 All right, everyone. Have a good afternoon and stay  
15 safe, all of you.

16 MR. DANIELS: Thank you, Judge.

17 PRETRIAL SERVICES OFFICER: Thank you, Judge.

18 MR. CULLINANE: Thank you.

19 THE COURT: This concludes our calendar.

20 (Adjourned)

21

22

23

24

25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription to the best of my ability of the digital audio recording in the above-entitled matter.

March 29, 2021

s/ Joanne Mancari  
Joanne Mancari, RPR, CRR, CSR  
Court Reporter  
jemancari@gmail.com

# **EXHIBIT B**

**UNITED STATES PROBATION  
AND PRETRIAL SERVICE**

**MEMORANDUM**

**DATE:** March 4, 2021

**TO:** Honorable Michael J. Roemer  
U.S. Magistrate Judge

**FROM:** Andre M. McCray  
U.S. Probation Officer Assistant

**SUBJECT:** Peter Gerace  
WD/NY Docket #19-CR-227  
SD/FL Docket # 21-MJ-06112  
**Updated Information**

On March 1, 2021, the above-named defendant appeared with retained counsel for an initial appearance before U.S. Magistrate Judge, Alicia O. Valle, in the Southern District of Florida, on an indictment and warrant originating from our district. At that time, the defendant was released on a personal surety bond with global positioning satellite system (G.P.S.) via home detention. The Court allowed the defendant to reside in Florida, until his scheduled return to the Western District of New York on Friday, March 3, 2021.

**It is to be noted that the time of the defendant's initial drug test conducted in the Southern District of Florida, he tested positive for cocaine. Mr. Gerace reported taking some pills at a social gathering but, did not report cocaine use. At the time of the pretrial services interview, the defendant reported a history of cocaine use, with his last date of use being approximately one and a half years ago.**

I have reviewed the bail report authored by U.S. Probation Officer, Yolonda N. Rawl, in the Southern District of Florida, in which the recommendation was detention pending the disposition of the case. I respectfully disagree with the aforementioned recommendation. Our office respectfully recommended that the defendant be released on the following conditions imposed by U.S. Magistrate Judge, Alicia O. Valle, in the Southern District of Florida.

Report to Pretrial Services as directed by the U.S. Probation Officer.

Surrender any passport/passport card to the Clerk of the Court. Surrender other international travel documents to the appropriate authorities.

Do not obtain a new passport or other international travel documents.

Travel restricted to: Western District of New York unless Court permission is granted to travel elsewhere.

Remain at a verifiable address as approved by Pretrial Services.

Avoid all contact with codefendants and defendants in related cases unless approved by Pretrial Services.

Avoid all contact with, directly or indirectly, with any person(s) who are or who may become a potential victim or witness in this case.

Possess no firearm/destructive device.

Refrain from any use of alcohol.

Refrain from the use or unlawful possession of a narcotic drug unless prescribed.

Submit to drug/alcohol testing and/or treatment as directed by Pretrial Services, including co-pay.

Refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing which is required as a condition of release.

Abide by the conditions of the Location Monitoring Program (GPS), to be monitored electronically, via home detention, you are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearance and court-ordered obligations. You will contribute to the cost of services (co-pay) as directed by the Pretrial Services Officer.

Refrain from obstructing or attempting to obstruct or tamper, in any fashion, with electronic monitoring which is required as a condition of release.

Report within 72 hours, to the Pretrial Services Office any contact with any law enforcement personnel, including, but not limited to any arrest, questioning or traffic stop.

The defendant shall not have any contact with Katrina Nigro.

The defendant shall not visit Pharaoh's Gentlemen's Club located at 999 Aero Drive, Cheektowaga, New York; an order to stay away from the strip clubs.

If Your Honor should have any questions, feel free to contact me at

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, \* Docket No.  
\* 1:23-cr-00037-JLS-MJR-1  
\*  
\* Buffalo, New York  
v. \* March 24, 2023  
\* 1:03 p.m.  
\*  
PETER GERACE, JR., \* ARRAIGNMENT  
\*  
Defendant (1). \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

TRINI E. ROSS,  
UNITED STATES ATTORNEY,  
By DAVID RUDROFF, ESQ.,  
JOSEPH M. TRIPI, ESQ.,  
NICHOLAS COOPER, ESQ.,  
Assistant United States Attorneys,  
Federal Centre,  
138 Delaware Avenue,  
Buffalo, New York 14202,  
Appearing for the United States  
And  
JORDAN ALAN DICKSON, ESQ.,  
U.S. Department of Justice,  
Criminal Division,  
Public Integrity Section,  
1331 F Street NW,  
Washington, DC 20004.

For the Defendant:

LIPPES MATHIAS WEXLER FRIEDMAN, LLP,  
By ERIC M. SOEHNLEIN, ESQ.,  
50 Fountain Plaza,  
Suite 1700,  
Buffalo, New York 14202.

1                   The Courtroom Deputy:                   KIRSTIE L. HENRY  
2  
3                   Court Reporter:                         BONNIE S. WEBER,  
4                                                                 Notary Public,  
5                                                                 Robert H. Jackson Courthouse,  
6                                                                 2 Niagara Square,  
7                                                                 Buffalo, New York 14202,  
8                                                                 Bonnie\_Weber@nywd.uscourts.gov.  
9

10  
11                   Proceedings recorded by mechanical stenography,  
12                                                                 transcript produced by computer.  
13  
14

15                   (Proceedings commenced at 1:03 p.m.)  
16  
17

18                   **THE CLERK:** All rise.

19                   The United States District Court for the Western  
20                   District of New York is now in session. The Honorable John  
21                   Sinatra presiding.

22                   **THE COURT:** Please be seated.

23                   **THE CLERK:** United States versus Peter Gerace, Jr.,  
24                   case number 23-CR-37. This is the date set for arraignment.

25                   Counsel, please state your appearances for the record.

1                   **MR. TRIPI:** Good afternoon, Your Honor. Joseph Tripi,  
2                   David Rudroff, Nicholas Cooper, and Jordan Dickson for the  
3                   United States.

4                   **MR. SOEHNLEIN:** Good afternoon, Your Honor. Eric  
5                   Soehnlein with Mr. Gerace.

6                   **THE COURT:** Good afternoon, counsel.

7                   Good afternoon, Mr. Gerace.

1                   **THE DEFENDANT:** Good afternoon.

2                   **THE COURT:** Mr. Tripi, are there any victim  
3 notifications required at this time?

4                   **MR. TRIPI:** Yes, there are, Your Honor. We're making  
5 efforts to make notifications to the witnesses.

6                   **THE COURT:** And the indictment has been unsealed?

7                   **MR. TRIPI:** I'll make that application now and move to  
8 unseal the indictments.

9                   I have previously provided it to probation and defense  
10 counsel this morning, but I have not asked you to unseal yet, so  
11 I'm making that application now.

12                  **THE COURT:** Any objections, Mr. Soehnlein?

13                  **MR. SOEHNLEIN:** No objections, Your Honor.

14                  **THE COURT:** Okay. That application is granted.

15                  Anything else to do?

16                  **MR. TRIPI:** Yes, Your Honor. There's a four-count  
17 indictment charging the defendant with three counts of witness  
18 tampering.

19                  Each of those three counts each relate to allegations,  
20 November 19, 2019. Each of those three counts carry with it a  
21 maximum penalty of 20 years and a \$250,000 fine.

22                  A fourth count is Count Four, distribution of cocaine,  
23 dated November 19, 2019. All of the alleged crimes are in this  
24 district. That also carries a maximum penalty of \$20 million  
25 and a \$1 million fine.

1 I assume that the defense will waive a reading of the  
2 indictment and enter a plea of not guilty, but --

3 **THE COURT:** Do you concur, Mr. Soehnlein, in that  
4 regard?

5 Do you represent Mr. Gerace on this indictment?

6 **MR. SOEHNLEIN:** I do, Your Honor. I'm retained. We  
7 will waive any further reading. We will enter a plea of not  
8 guilty.

9 **THE COURT:** Okay. All right. In order to take those  
10 not guilty pleas, we're going to administer the oath to  
11 Mr. Gerace.

12 So why don't you stand and take the oath, Mr. Gerace.

13 Ms. Henry --

14 **MR. SOEHNLEIN:** Can I just have one minute with him,  
15 Your Honor?

16 **THE COURT:** Of course.

17 (Discussion off the record.)

18 **MR. SOEHNLEIN:** Thank you, Judge.

19 **THE COURT:** Okay, Ms. Henry.

20  
21 **PETER GERACE**, having first been duly sworn, testified as  
22 follows:

23  
24 **THE DEFENDANT:** I do.

25 **THE COURT:** Please be seated, Mr. Gerace. What's your

1 full name?

2           **THE DEFENDANT:** Peter Gerace.

3           **THE COURT:** Okay.

4           **THE DEFENDANT:** G is a middle initial.

5           **THE COURT:** All right. And how old are you?

6           **THE DEFENDANT:** 55.

7           **THE COURT:** How far along in school did you go,  
8 Mr. Gerace?

9           **THE DEFENDANT:** First year of college.

10          **THE COURT:** What's your most recent or current  
11 employment?

12          **THE DEFENDANT:** Pharaoh's.

13          **THE COURT:** Are you currently or have you recently  
14 been under the care of a physician or psychiatrist or been  
15 hospitalized or treated for narcotics addiction?

16          **THE DEFENDANT:** I go to a psychiatrist, but not for  
17 that.

18          **THE COURT:** Is there anything about that, what you go  
19 to a psychiatrist for that affects your judgment?

20          **THE DEFENDANT:** No.

21          **THE COURT:** Does it affect your ability to understand  
22 what you are doing here today?

23          **THE DEFENDANT:** No.

24          **THE COURT:** Have you taken any drugs, medication,  
25 pills, or any alcohol in the last 24 hours?

1                   **THE DEFENDANT:** No.

2                   **THE COURT:** Is Mr. Soehnlein your lawyer?

3                   **THE DEFENDANT:** Yes.

4                   **THE COURT:** Okay. Have you received a copy of the  
5 indictment that Mr. Tripi summarized?

6                   **THE DEFENDANT:** Yes. It's here.

7                   **THE COURT:** Have you had a chance to discuss it with  
8 your lawyer?

9                   **THE DEFENDANT:** Yes.

10                  **THE COURT:** And are you waiving reading of that  
11 indictment?

12                  **THE DEFENDANT:** Yes, Your Honor.

13                  **THE COURT:** How do you plead to the four counts in  
14 that indictment?

15                  **THE DEFENDANT:** Not guilty.

16                  **THE COURT:** And that's as to all four counts?

17                  **THE DEFENDANT:** Yes, sir.

18                  **THE COURT:** Okay. As you know, Mr. Gerace, you have  
19 the right to an attorney in this case, this new indictment.  
20 We'll address the detention request, if any, and the pretrial  
21 release issue, if any, next.

22                  You have a right to consult your counsel. You have a  
23 right not to make any statement. If you choose make a  
24 statement, that statement may be used against you.

25                  Are you aware of all that?

1                   **THE DEFENDANT:** Yes, Your Honor.

2                   **THE COURT:** Okay. I need to cover the Due Process  
3 Protections Act.

4                   That statute and Rule 5(f)(1) require me to direct the  
5 prosecution to comply with its Brady obligation and that case's  
6 progeny, to disclose to the defense all information, admissible  
7 or not, that is favorable to the defendant, material either to  
8 guilt or punishment and known to the prosecution.

9                   Possible consequences for noncompliance may include  
10 dismissal of individual charges or the entire case, exclusion of  
11 evidence, and professional discipline or court sanctions on the  
12 responsible attorneys.

13                  I'm going to enter that order now and direct the  
14 prosecution to review and comply with it.

15                  **MR. TRIPI:** Understood, Your Honor.

16                  **THE COURT:** Okay. Here it is.

17                  Okay. As to the arraignment, Mr. Tripi, have I missed  
18 anything?

19                  **MR. TRIPI:** No, Your Honor.

20                  **THE COURT:** Mr. Soehnlein --

21                  **MR. SOEHNLEIN:** No, Your Honor.

22                  **THE COURT:** Okay. Before we get to any detention or  
23 release issue, Mr. Tripi, is there anything I need to know about  
24 the Government's plans for this indictment vis-a-vis the other  
25 pending case that I've got with Mr. Gerace and Mr. Bongiovanni?

1                   **MR. TRIPI:** Yes, Judge. We do plan within relatively  
2 short order to file a motion to join this case with the pending  
3 indictment that's set for trial.

4                   **THE COURT:** Okay. I'm going to be, at some point  
5 today, sending you, both sides, to Magistrate Judge Roemer to  
6 work out a schedule -- a pretrial schedule.

7                   So there will be a referral and pretrial schedule in  
8 front of Judge Roemer. You probably want to let him know your  
9 plans as well.

10                  **MR. TRIPI:** Yes, Your Honor.

11                  **THE COURT:** Next, is the Government moving for  
12 detention?

13                  **MR. TRIPI:** Yes, Judge. We are moving for detention.

14                  **THE COURT:** Okay. And, Mr. Soehnlein, are you  
15 prepared to proceed and have a detention hearing now?

16                  **MR. SOEHNLEIN:** Yes, Your Honor.

17                  **THE COURT:** Okay.

18                  **MR. TRIPI:** May I proceed, Your Honor?

19                  **THE COURT:** You may.

20                  **MR. TRIPI:** Your Honor, this four-count indictment, as  
21 you know, charges three counts of witness tampering and one  
22 count of distribution of cocaine, which occurred November 19,  
23 2019.

24                  At the outset, I will just note that Count Four of  
25 this indictment does carry a presumption of detention pursuant

1 to Title 18, US Code Sections 3142(e) (3) (C) and (f) (1) (C), due  
2 to the drug count that's included. The presumption is that the  
3 defendant is a flight risk and a danger to the community.

4 Additionally, Your Honor, we will be proceeding by  
5 proffer, as is well-documented is permitted by the Second  
6 Circuit in United States versus LaFontaine. That's a Second  
7 Circuit case in year 2000.

8 And interestingly, in that case, Your Honor, before I  
9 get to the core of my proffer here, that case involved witness  
10 tampering, and it didn't allege any allegation of violence or  
11 threats, which is a little bit different here; this involves  
12 intimidation and threats.

13 In LaFontaine, the Court said: We have a record of  
14 violence or dangerousness in the sense of threats or is not  
15 necessary to support pretrial detention. Citing to the  
16 Ferranti case and the Rodriguez case.

17 Second, Second Circuit said: Obstruction of justice  
18 has been a traditional ground to grant detention by the courts  
19 even prior to detention for dangerousness.

20 Which was instituted prior to the Bail Reform Act --  
21 excuse me -- instituted by the Bail Reform Act.

22 The Court went on to talk about in the Gotti case,  
23 that there was a single incident of witness tampering that  
24 constituted a threat to the integrity of the trial process,  
25 rather than more generally a danger to the community, so

1 LaFontaine cited to the Gotti case.

2 Further in the LaFontaine case, the Second Circuit  
3 stated: We have held, quote, the sort of electronic  
4 surveillance suggested by the defendants can be circumvented.

5 Home detention and electronic monitoring, at best,  
6 elaborately replicate a detention facility, without the  
7 confidence of security such a facility instills.

8 Citing to Millan with citations and quotations  
9 omitted. That cite to LaFontaine is 210(f)(3)(E), 125, and cite  
10 135 Second Circuit 2000.

11 As this Court is aware, the factors to consider are  
12 the nature and circumstances of the offense charged when you are  
13 weighing whether to detain the defendant; the weight of the  
14 evidence against the person.

15 Significantly in the Government's view, the history  
16 and characteristics of the person -- which I'll spend some time  
17 on; and the nature and seriousness of the danger to any person  
18 or the community that would be posed by the person's release.

19 Another case they talked about, the nature and the  
20 circumstances of the witness tampering in a criminal proceeding  
21 being serious, is relatively a recent case, United States versus  
22 Murray. It's an SDNY case from February of 2023; 2023 Westlaw  
23 2055886.

24 And in the Murray case, they quote to the Supreme  
25 Court, stating that the Government is not obligated to show that

1 the defendant had any particular law enforcement officer or  
2 officers in mind when the defendant acted, observing that  
3 witness tampering occurs frequently and most effectively before  
4 the victim has engaged in any communication with officers.

5                  Another case in this district, United States versus  
6 Fernandez, 50 F Supp. 3(b) 406409, Western District of New York,  
7 December 8, 2014. In that case the Court stated: Superseding  
8 indictment reflects a finding of probable cause by a Grand Jury,  
9 that the defendant engaged in witness tampering, which only  
10 further supports a finding that the defendant presents a danger  
11 to others in the community.

12                  So in this case, Your Honor, I'm going to start with  
13 this defendant's conduct towards the witness, who is the victim  
14 of the threatening communications that are alleged in the  
15 indictment, so a little history is warranted here.

16                  On or about April 9, 2019, that victim/witness was  
17 arrested by the Amherst Police Department and charged by that  
18 department with stealing Mr. Gerace's Rolex.

19                  That day, after being arrested, Federal agents were  
20 contacted by a supervisor at the Amherst Police Department, and  
21 Federal agents responded there and spoke with this witness.

22                  In that set of conversations, the witness made  
23 statements about this defendant, about fairness, and generally  
24 about some of the -- some of the information that culminated in  
25 the charges in the indictment. But to be clear, this was one of

1 many witnesses. But, generally, it involved information about  
2 drug trafficking.

3 Now, I'll note -- and I'll get to this later in my  
4 presentation -- that this defendant has many contacts in law  
5 enforcement, many friends in high places, to include State  
6 judges, members of law enforcement, multiple prior police  
7 commissioners of the Buffalo Police Department, police  
8 commissioners, friends in police departments -- in local police  
9 departments.

10 He has bragged to witnesses that he has contacts in  
11 every local police department, political figures, and many  
12 others. And we get that through our investigation through  
13 multiple sources of information.

14 But what's clear here, is that on this April 9, 2019,  
15 arrest -- I won't name the detective who made the arrest -- but  
16 the detective who made the arrest, based upon the defendant's  
17 complaint, is the same detective who made multiple arrests of  
18 Mr. Gerace's ex-wife, who you've heard.

19 The defense named in many, many court appearances, and  
20 even most recently in a court filing before this court: Well,  
21 that detective was the same detective who arrested his ex-wife  
22 on multiple occasions for various contempt charges, for conduct  
23 that included things as innocuous as liking a Facebook post.

24 While that detective is the same detective that  
25 arrested this witness, and subsequent to the arrests of Gerace's

1 ex-wife, and prior to the arrest of the witness here, from text  
2 messages in Mr. Gerace's phone, which have been turned over to  
3 him -- this whole phone extraction has been turned over, I'll  
4 just give you one example.

5 On December 20, 2018, at 19:06 p.m., Gerace texted:  
6 "Now I've had it. Now keep in touch; we've got to get a drink."  
7 And there was some communications about needing the phone  
8 number.

9 This detective texted back that same day within the  
10 next -- 24 seconds later: "Absolutely. Let's get a drink  
11 soon." And then another 56 seconds later texted: "What time  
12 you hanging out up there tonight?"

13 So this defendant has had the ability to have friends  
14 of his arrest witnesses in this case.

15 **THE COURT:** Let me pause you there. I just need to --  
16 because otherwise, I'm going to forget to come back to it.

17 **MR. TRIPI:** Yeah.

18 **THE COURT:** Is this detective that you are talking  
19 now, the same person who alerted Federal law enforcement?

20 **MR. TRIPI:** To what?

21 **THE COURT:** To come down and --

22 **MR. TRIPI:** No.

23 **THE COURT:** Okay.

24 **MR. TRIPI:** So the detective arrests -- brings to the  
25 station house, and then the supervisor gets involved. The

1 supervisor contacts Federal law enforcement.

2           **THE COURT:** Got it. Okay. Go ahead.

3           **MR. TRIPPI:** So this witness spoke with some Federal  
4 authorities that day, was released, but Federal authorities have  
5 no role in what happened regarding the allegation regarding the  
6 Rolex watch.

7           In July of 2019, a long-time associate of Mr. Gerace  
8 and employee at Pharaoh's attacked that witness and made  
9 comments about speaking to the Feds.

10          Now, the Feds, quote, unquote, did not publicize this  
11 witness's conversations with them. Nevertheless, she was  
12 assaulted.

13          In October of 2019, the witness testified to the Grand  
14 Jury regarding this investigation. On October 31, 2019, the  
15 initial indictment in this case was filed under seal, charging  
16 defendant Bongiovanni by name, but clearly referencing Peter  
17 Gerace as co-conspirator one, and referencing a gentleman's  
18 club.

19          Although at that time, the defendant was not named,  
20 Mr. Gerace's actual cell phone number was referenced in one of  
21 the overt acts charging Bongiovanni. That indictment was  
22 unsealed November 5, 2019, to a great deal of media attention.

23          It would have been absolutely and abundantly clear to  
24 Mr. Gerace that he was a target of a Federal investigation no  
25 later than November 5, 2019.

1           But based on these circumstances -- and I submit the  
2 corroborating circumstances of a witness against him being  
3 assaulted at a bar, it seems he knew well before then.

4           Additionally during that timeline in April, his phone  
5 was seized at a border search, so he knew he was a target.

6           November 19, 2019, the defendant was with two female  
7 associates of his, and as of that date, he'd had conversations  
8 clearly describing this witness/victim in this indictment as a  
9 snitch. That is, a snitch that was resulting in the problems he  
10 was looking at Federally, being a target.

11          After referring to that witness as a snitch on prior  
12 occasions, that brought -- brings us to the night of  
13 November 19, 2019, where Mr. Gerace was with two females in his  
14 basement.

15          And after having drinks with them and providing each  
16 of them cocaine, that all three of them used, Mr. Gerace making  
17 comments and statements about the witness in this case being a  
18 snitch and a snitch bitch.

19          His colleague -- his confidante, a proxy of his, you  
20 might say, made some messages, borrowing the other female's  
21 phone, because this witness had taken the steps to block certain  
22 people from her Facebook account.

23          But the third person in the room was not blocked, so  
24 that provided an avenue for communications.

25          So the one female associate of Mr. Gerace borrows the

1 other female associate of Mr. Gerace's phone, while all three of  
2 them are using cocaine and makes statements that are stated out  
3 loud as to what those threats are.

4 And it was after Mr. Gerace was making comments about  
5 the witness. I'll read them to you, leaving out names. The  
6 Facebook communication reads: "Hey, you ray ass bitch" -- I  
7 believe that to be a typo, potentially. Y is next to T on a  
8 keyboard.

9 "It" and then name, "I'm good to G" -- should be "good  
10 to go." "See you, and when I do, well, use your imagination,  
11 bitch, you snitch junkie cunt. You are a fucking funny cunt.

12 You do whatever for drugs. In feeling" -- should be  
13 "I'm feeling" -- insert name of second female Gerace associate,  
14 "in on how much of a scum bag you are. But if you want to claim  
15 Peter's home like you deserve it, bitch.

16 You deserve nothing, you nasty cunt. Learn how to be  
17 a mother, because your husband was just at my place filling me  
18 in on how my" -- it says, "H of a pull." I believe it should  
19 be, "pill head junkie you are.

20 Too bad you couldn't take" -- insert name of second  
21 Gerace female associate -- "down. Oops. She is too smart  
22 because you're the biggest piece of shit I've ever met.

23 That why" -- insert name another female -- "was  
24 fucking your husband and being mother to your daughter, you  
25 junkie ass pond scum.

1 Plan on nothing. Peter knows better, you fucking nut.  
2 Girl, H" -- should be U. U and H are next to each other on a  
3 keyboard -- "Girl, you don't want to fuck with me. You know how  
4 I get down. I hope you fucking his, cunt."

5 And then there are some typos. It talks about  
6 shampoo, and then the last line is: "Ha ha, you are a joke. Go  
7 kill yourself, you dirty cum guzzling whore."

8 When those messages were sent, while those three were  
9 together, well after this woman had talked to Federal  
10 authorities, testified in the Grand Jury, they are designed to  
11 scare the witness.

12 They did scare the witness. The witness was very  
13 familiar with Pharaoh's; very familiar with Gerace; very  
14 familiar with his associates; very familiar with the people that  
15 run his club, and the biker gang that he employs at his club.  
16 It had the designated effect.

17 Now, December 19, 2019, the defendant doesn't stop  
18 there. This witness is one of two females that the defendant  
19 sues in State court in sum and substance for slander.

20 And in that civil law suit, which this court later  
21 enjoined, he alleged that this witness provided false  
22 information to the FBI, in connection with the date of her  
23 arrest for the watch.

24 Notably, she didn't talk to the FBI on that day. So  
25 the information in the lawsuit was inaccurate from the

1 beginning.

2           But notably, that may support another charge for  
3 witness intimidation under Title 18, United States Code, Section  
4 1513(e), and there is support for this in the case law that  
5 we're looking into.

6           That statute provides: Whoever knowingly, with intent  
7 to retaliate, takes any action harmful to any person, including  
8 with the lawful employment or the livelihood of another -- any  
9 person, for providing to the law enforcement officer any  
10 truthful information, relating to the commission or possible  
11 commission of any Federal offense, shall be guilty of a crime.

12           There is a 10th Circuit case where an individual sued  
13 his ex-girlfriend, who became a witness. The US Attorney  
14 charged the case. The 10th Circuit affirmed the conviction.

15           So although the injunction that you ordered was taken  
16 up on appeal, there might be criminal liability with respect to  
17 even the filing of that civil lawsuit.

18           Obviously, Gerace is named as a charged defendant in a  
19 very serious second superseding indictment. I'm not going to  
20 spend a lot of time on that, because that's in front of Your  
21 Honor and it's set for trial.

22           But I do think since it's never been proffered to this  
23 Court, and you have to consider its history and  
24 characteristics, there are a couple of things I think the Court  
25 should know.

1           And one of them relates to some of the relationships  
2 with some of the people that go to Pharaoh's, to include a  
3 former State Supreme Court judge.

4           The law provides that "Johns", that is men who receive  
5 sex from prostitutes, are liable for Federal sex trafficking  
6 crimes.

7           They can be what are referred to as unindicted  
8 co-conspirators. Now, this particular judge I'm talking about  
9 is unfortunately deceased former Judge Michalski.

10          But it goes to show you that people in the position of  
11 power this defendant has access to, absolutely ruin people's  
12 lives.

13          One of the text messages in the defendant's phone,  
14 that will be introduced at trial, further corroborating some of  
15 the other witnesses that will testify, is that Supreme Court  
16 judge texting the defendant: "You're funny. Let's get some  
17 pussy there."

18          The defendant responding: "Where and when?" This is  
19 back in 2015. And the defendant is following up with: "I want  
20 drinks."

21          A former Pharaoh's dancer who will testify at trial  
22 and who testified in the Grand Jury, will explain she began at  
23 Pharaoh's as an 18-year-old and continued there for  
24 approximately five years.

25          When she began working at Pharaoh's, she'd never used

1       drugs. Within two months, she was addicted to cocaine and  
2       heroin and began having sex in exchange for drugs and money,  
3       with Gerace and his friends.

4                 She explained that other dancers performed sexual  
5       favors in exchange for drugs and money, and that managers at  
6       Pharaoh's knew what was going on.

7                 Gerace gave this young lady cocaine and money in  
8       exchange for intercourse and oral sex. And she did the same by  
9       going to a private upstairs area controlled by Gerace -- and I'm  
10      paraphrasing; these are not quotes -- with Gerace's friends, his  
11      brother, the DJ at his club.

12               This corroborated other information provided by the  
13      ex-wife, that they have repeatedly argued to you is so  
14      perjurious.

15               This young lady testified in the Grand Jury, and I  
16      anticipate will testify at trial in sum and substance, that she  
17      felt Gerace and others used her addiction against her to engage  
18      in prostitution. And she had that opinion of other dancers as  
19      well.

20               When asked how many times she overdosed at Pharaoh's,  
21      this young lady said: "One time that I can remember." But  
22      seemed to acknowledge there might have been other occasions.

23               Another young lady, who I anticipate will testify, was  
24      employed there for about six years. She made statements against  
25      her own penal interest, described girls going upstairs and Peter

1 and his friends, that she knew something was going on.

2 Quote: For as long as they were up there, girls would  
3 come back down and say I need a shower or a baby wipe.

4 Consistent with having had sex -- that's me speaking now, Judge.

5 When asked how many dancers were using drugs inside of  
6 Pharaoh's, this witness said: Probably about 50. He's the  
7 owner. He was in control. He provided some of the drugs.

8 Another young lady who I anticipate will testify, she  
9 acknowledged becoming involved in prostitution though men she  
10 met at Pharaoh's, and knew other dancers were engaged in  
11 prostitution there as well.

12 I anticipate evidence about high-end prostitution for  
13 important people in this community, to include some potential  
14 defense lawyers.

15 One defense lawyer who was mentioned by other  
16 witnesses, testified in the Grand Jury and acknowledged that  
17 Gerace provided him with cocaine on several occasions, to  
18 include at Pharaoh's.

19 That defense lawyer testified in the Grand Jury, and  
20 they will be getting his Jencks this week.

21 Regarding some of the high-end prostitution, there was  
22 evidence that Judge Michalski was one of those high-end  
23 customers, and that he liked the female name Shelby.

24 So when we looked at Mr. Gerace's text communications  
25 with that judge, Mr. Gerace texted the judge on January 4th,

1       2017: "LOL. I was with Shelby."

2                   And then he asked -- I don't know what he asked means  
3                   -- and the judge responded: "Ha ha ha ha ha."

4                   In 2015, the New York State Police received  
5 information that prostitution and narcotic activity was taking  
6 place at Pharaoh's, and they began undercover operations there,  
7 where they purchased cocaine inside of Pharaoh's in January of  
8 2015.

9                   The Erie County DA's office at the time, surely  
10 unaware of the relationship between Judge Michalski and Peter  
11 Gerace, actually went to Judge Michalski to get a protective  
12 order to not disclose the names of identifying witnesses in the  
13 case until trial of one of the dancers who sold drugs.

14                  Michalski -- who I'll get into in a moment -- had, in  
15 the defendant's prior criminal case, written a letter on his  
16 behalf, acknowledging they were personal friends, didn't recuse,  
17 signed the order. And then ultimately, that case went nowhere.  
18 I don't think that was a coincidence.

19                  Additional text messages between Michalski and Gerace  
20 include -- in the years that that local detective was arresting  
21 Gerace's ex-wife, he was sending screenshots of her mug shots to  
22 the judge, who mocked her.

23                  Who said things like: Wow. Unbelievable. Ha ha ha.  
24 And, "She looks like crap. Give her enough rope." Those  
25 messages were in 2019 -- excuse me -- those messages were in

1 2017.

2           Despite that and despite knowing full well the  
3 relationship that he had with Gerace and the witness in this  
4 case, when his ex-wife was arrested for driving drunk and  
5 hurting someone, the judge heard the case, took the plea.

6           And then only when publicity in this case started, he  
7 recused himself prior to sentencing.

8           And that's just one example that I'm willing to talk  
9 about today, of people in high places, that we submit the  
10 defendant has been able to groom over time.

11           Just like females that he groomed at his club,  
12 leveraged relationships with, and ruined lives.

13           That's the type of danger that maybe this Court hasn't  
14 seen yet, but that's the type of danger this defendant poses.

15           So despite those text messages in 2017, mocking his  
16 ex-wife, the judge handled her case in 2019 in October. Those  
17 messages will be introduced before the Court, corroborating the  
18 witnesses in this case.

19           But there is more to his history here. In 2005, the  
20 defendant was convicted of wire fraud for a telemarketing scam  
21 where he bilked elderly people out of money with the promise of  
22 lavish prizes.

23           It started as a Federal plea agreement. The defendant  
24 admitted he was an organizer. The plea was to Title 18, US  
25 Code, Section 371, conspiracy to commit wire fraud,

1 telemarketing fraud.

2                 Among the letters on his behalf at sentencing, again,  
3 was the deceased Judge Michalski's letter in support of  
4 sentencing.

5                 And then deputy police commissioner of the Buffalo  
6 Police Department, who later was the Commissioner, including  
7 part of the time period of this indictment, that same judge --  
8 and I'll get to it -- also handled the defendant's custody and  
9 name change of his son.

10               He had a son with a young lady, and I'll get to how he  
11 assaulted her in a moment, but while she was afraid of him and  
12 on the run in fear for her life, hiding out, the judge -- excuse  
13 me -- this defendant did a pro se motion for a name change to  
14 have his son's name changed to this name.

15               And that judge granted it the same day. The mother  
16 was nowhere to be found, but, of course, it was applied for and  
17 granted the same day.

18               In 2010, there was information that the defendant was  
19 traveling with a young lady from New York City. There was a tip  
20 that she had drugs in a false compartment, coming through the  
21 airport.

22               At that time, law enforcement had a canine do a sniff.  
23 The dog didn't alert, and they decided not to stop and question.

24               But the information about the defendant having a  
25 supplier throughout that timeframe, there was other information

1 to suggest that, that I've reviewed in this investigation.

2 So looking back at that tip that didn't turn out to be  
3 anything, I will consider asking you to consider that part of  
4 his history.

5 Then while on supervised release in front of Judge  
6 Skretny, he would have received six months in prison, five years  
7 on supervised release, for his wire fraud conviction.

8 He told probation he wasn't working at Pharaoh's. He  
9 said he was working at Pietro's. FBI had to provide probation  
10 with information about criminality that the defendant was  
11 involved in. That led to a probation search.

12 See, no offense to probation, they are spread thin,  
13 they don't find out about crimes.

14 It takes more law enforcement resources and  
15 investigation to find out, except when they get lucky and they  
16 do a walkthrough in plain view and someone leaves a gun out.  
17 Probation doesn't investigate crimes, Judge.

18 But a canine was walked through Pharaoh's, and a  
19 canine hit several locations -- in several locations in the club  
20 where marijuana, Lortabs were found.

21 The canine also alerted to two safes that were in the  
22 club. One empty safe, and one safe that had money.

23 But that day, October 31st, 2009, formed part of the  
24 violations that occurred in front of Judge Skretny.

25 In 2012, the defendant had a domestic incident with a

1 an ex-girlfriend of his. He choked her. She stated that she  
2 saw stars, but did not lose consciousness.

3 He punched her in the side of the face, and she  
4 stabbed him. She described a violent interaction between the  
5 two that happened in this involvement.

6 A year later -- approximately a year later in 2013 --  
7 the defendant was arrested May 2nd, 2013. He was later  
8 convicted of assault in the 3rd degree, an A misdemeanor.

9 It's odd, because the arrest occurs in 2013, but --  
10 and he pleads guilty in 2013, but he wasn't sentenced, according  
11 to his rap sheet, until October of 2016, to three years of  
12 probation.

13 I've not yet looked to see what judge that case was in  
14 front of. I don't have that information.

15 But regarding some of the facts of the underlying  
16 strangulation and assault, Buffalo 911 received a call from the  
17 woman who then said: "Never mind. Never mind." The caller  
18 hung up, but not before dispatcher heard: "Look what you did to  
19 my face."

20 The call was traced to 95 Joseph Drive. Town of  
21 Tonawanda police officers responded and arrived at the scene,  
22 spoke to Peter Gerace. Who stated there weren't any problems.

23 They then spoke to the victim, who had a black eye and  
24 a scratch on her neck. But the victim was denying that anything  
25 occurred and said her injuries were the result of playing catch

1 with her son.

2           The police officers on the scene assessed that this  
3 defendant and the female were not forthcoming with information.  
4 Both insisted the injuries were sustained while playing catch.

5           Ultimately, the young lady was interviewed at the  
6 police station, because the police noted in the reports that  
7 obviously she was afraid to speak freely in front of Peter  
8 Gerace and his extended family.

9           Reading from the excerpt from the police report:  
10 "While at our station, she spoke at length in private with a  
11 crisis service counselor in our family room with the door  
12 closed.

13           I could hear a lot of crying and distraught discussion  
14 coming from that room."

15           A little bit further: "A witness told the police that  
16 this victim had been repeatedly a victim of ongoing domestic  
17 abuse at the hands of Mr. Gerace for many years, and that the  
18 daughter was very afraid of him and his family."

19           Witnesses further -- a witness further reported that  
20 the defendant's seven-year-old child at the time, sometimes gets  
21 so nervous about his home life that he vomits when he has to  
22 return home.

23           A witness reported that this female had been to the  
24 hospital on prior occasions for unexplained injuries.

25           They explained that one time this female victim took

1 off to Florida out of fear of being killed by the defendant.

2 And during that time, Gerace went to court and obtained sole  
3 custody of the child.

4 I've previously indicated about the name change order  
5 that we found during a search warrant of Mr. Gerace's house,  
6 signed the same day by Judge Michalski.

7 The family thought she was dead, because she was in  
8 such deep hiding. So much so, that they recorded a Niagara  
9 County cadaver dog search various locations for this young lady.  
10 They were convinced that she was dead.

11 Yet she was still refusing to sign a police report out  
12 of fear. Ultimately, that case did go forward, and there was a  
13 conviction for assault in the 3rd degree.

14 But there is more. And this is sort of hot off the  
15 press, Judge. Just today our office received a subpoena  
16 response from the Small Business Administration regarding the  
17 defendant's EIDL loan application during COVID.

18 It's clear from that application that the defendant  
19 made several material false statements that resulted ultimately  
20 in him acquiring \$2 million from the Small Business  
21 Administration, based upon material misrepresentations that are  
22 in this application.

23 For example, he said he did not provide sexual  
24 services at his business. Had he checked the box yes, it would  
25 have been over with.

1                   The actual question is: Applicant does not present  
2 live performances of a prurient sexual nature, or derived  
3 directly or indirectly, more than through the disclosed revenue,  
4 through the sale of products or services or presentation of any  
5 depictions or displays of a prurient sexual nature.

6                   So he said no, on April 5th of 2020. The loan was  
7 funded to the tune of \$150,000 in June of 2020.

8                   Around that same time, he had applied for a separate  
9 PPP loan and was told and acknowledged in an affidavit filed in  
10 Federal Court, that he knew that he was advised that his  
11 business was of a prurient sex nature.

12                  That litigation was conducted by AUSA Michael Cerroni  
13 before District Court Judge Lawrence Vilardo.

14                  So as he's fighting that with the PPP people, he then  
15 applied for a loan modification in July of 2021, asking for an  
16 increase in his EIDL loan, E-I-D-L. And around July of 2021,  
17 it's increased to \$500,000.

18                  Now, this is after he's told that his business is of a  
19 sexual and prurient nature; after he acknowledged that in a  
20 sworn affidavit in Federal Court.

21                  And as part of the EIDL loan questionnaire that asked  
22 of him, one of the questions asks, also, Your Honor: For any  
23 criminal offense, other than a minor vehicle violation, have you  
24 ever been convicted, pled guilty, plead nolo contendere or  
25 placed on pretrial diversion or been placed on any form of

1 parole or probation, including probation before judgment? He  
2 checked no.

3 He was clearly a Federal felon before Judge Skretny.  
4 He had also had a conviction for assault, which he got sentenced  
5 to probation on. So there is another lie. And he ultimately  
6 gets the loan funded to the tune of \$2 million.

7 And as of July 2021, he was under Federal indictment.  
8 So there is another question that reads: Are you presently  
9 subject to an indictment? And he says: No.

10 And when he went to extend the loan, there is  
11 questions: Has anything changed since the last time? So he  
12 should have said yes. I am now under Federal indictment.

13 He indicates: No. And he gets the loan funded to the  
14 tune of \$2 million.

15 Now, a USA Rudroff is our office's coordinator for  
16 COVID prosecutions. And he estimates that this is the third or  
17 fourth largest fraud of COVID since it happened in this  
18 district.

19 \$2 million, that's the maximum you can get. I would  
20 anticipate charges forthcoming in short order. We just got this  
21 information today.

22 So connections with powerful people; lying; fraud;  
23 prior fraud; prior felony convictions; endangering people;  
24 scaring them through proxies, because he's not dumb enough to do  
25 it directly. Presumption in the Government's favor.

1 Now, the defense is going to argue: They knew about  
2 this for three years.

3 What I say to that, Judge, truth does not equal proof.  
4 It was true three years ago that through proxies, he intimidated  
5 and tampered with this young lady.

6 There is a reason there is a five-year statute of  
7 limitations; we are well within that. We now have the proof  
8 from everyone else who was involved and the victim of the crime.

9 I ask that you detain him on this indictment for all  
10 the reasons stated. Thank you, Judge.

11 **THE COURT:** While you're still there, Mr. Tripi, let  
12 me ask you -- just about that last point about "truth does not  
13 equal proof."

14 Some of the proffers about the first three counts in  
15 the indictment are facts that I would have heard in the other  
16 case and would have accounted for.

17 **MR. TRIPPI:** I don't think I went into that depth and  
18 detail at all. Because we're a lot closer to trial, they have  
19 stuff now. So there's a balance, Judge.

20 And at that point, we only had it from the one source  
21 -- I think -- maybe two. Certainly not all three.

22 We had recent testimony. And I'm not going to go much  
23 further than that, but there's a difference.

24 What's the old adage? Trust, but verify. It was true  
25 then; it's verified now. Now, there's an indictment. Now, the

1 presumption is triggered.

2 And I didn't go into that level of detail. I know  
3 95 percent of what I told you today, you've not heard before.  
4 And there is always a balance with protecting witnesses. Now,  
5 they know this stuff, I'm free to tell you more.

6 **THE COURT:** Mr. Soehnlein --

7 **MR. SOEHNLEIN:** Your Honor, it's an interesting and  
8 salacious story, and it's the reason that we have trials.

9 I can't possibly respond to all that stuff, and I  
10 don't have to respond to a lot of it, because most of it doesn't  
11 go to detention. That's what we're here to talk about. We're  
12 here to talk about detention.

13 The last date I heard the Government reference was  
14 2019. And I might have missed it, but I think it was 2019; is  
15 that right?

16 **MR. TRIPI:** For the stuff in the indictment, 2019 --

17 **MR. SOEHNLEIN:** '19.

18 **MR. TRIPI:** The loan stuff was 2021.

19 **MR. SOEHNLEIN:** All right. So the stuff that they're  
20 seeking detention on is 2019. Mr. Gerace was charged -- he was  
21 indicted in 2021.

22 Mr. Macaluso, he hasn't violated in any way, has he?

23 **PROBATION OFFICER:** To date -- today, no.

24 **MR. SOEHNLEIN:** You are still recommending release; is  
25 that correct?

1                   **PROBATION OFFICER:** Because the violation -- the new  
2 conduct was prior to his supervision, we cannot violate him on  
3 anything, no.

4                   **MR. SOEHNLEIN:** So, Your Honor, I think that's the  
5 important place to start.

6                   Now, to the extent that there is a presumption, okay?  
7 The presumption is on that last count.

8                   That last count, if you take Mr. Tripi's word for it,  
9 is what I would consider to be a recreational use of cocaine.  
10 Even on its best day, it is three people together in a basement  
11 using cocaine together.

12                  We're not talking about bricks of cocaine; we're not  
13 talking about firearms; we're not talking about helicopters  
14 coming from Miami. We're talking about three people in a  
15 basement, okay.

16                  That's the count that triggers the presumption. And  
17 the presumption is rebuttable. And it's rebutted by the last  
18 two and however many months that Mr. Gerace has been on  
19 supervised release without re-offense, Your Honor.

20                  The proof's in the pudding. There are terms and  
21 conditions that guarantee his return to court, the safety of the  
22 community, and he hasn't shown that he won't abide by any of the  
23 numerous protective orders.

24                  Now, the Government wants timelines. I like timelines  
25 too, Judge. I like timelines a lot. This conduct's allegedly

1       in November of '19, December of '19.

2                   Mr. Gerace gets charged in 2021. The Government  
3 references it in proffers for a while -- and I wasn't part of  
4 the case then, but I've read them.

5                   And what happened in this case three days ago, we made  
6 a motion to allow Mr. Gerace an opportunity to see some of the  
7 3500 material to assist in defense at trial.

8                   Those motions are under seal -- I'm not going to go  
9 into them. I'm certainly not going to name names, certainly not  
10 people who aren't here, people who may be deceased.

11                  But, Your Honor, it's a little suspicious that having  
12 that information for that long, this indictment comes three days  
13 after we try to give Gerace a fair opportunity to prepare his  
14 defense for the trial that's imminent and serious. It's going  
15 to be a fight for his life, Your Honor.

16                  So, Your Honor, there are terms and conditions that  
17 exist. There is a presumption that has been rebutted;  
18 probation's consenting or recommending his release.

19                  And I think those terms and conditions should be  
20 continued, Your Honor.

21                  **MR. TRIPPI:** Can I have a moment, Judge?

22                  **MR. SOEHNLEIN:** That's all I have. I can't go on as  
23 long as he has.

24                  **THE COURT:** Thank you, Mr. Soehnlein.

25                  **MR. SOEHNLEIN:** Thank you, Judge.

1                   **THE COURT:** Give me one second, Mr. Tripi.

2                   All right, Mr. Tripi.

3                   And then I'll give you the last word, Mr. Soehnlein.

4                   **MR. SOEHNLEIN:** Thank you, Judge.

5                   **MR. TRIPI:** I'll be very brief, Judge.

6                   As to the last point, and I made reference to it, but  
7 I just want to put a fine point on it.

8                   Probation only knows if the defendant tested positive  
9 for cocaine, and he hasn't.

10                  And they only know if he's where he's supposed to go  
11 to include on this earned leave, that nobody in my office knew  
12 existed for 20 years and apparently is a thing.

13                  He can go to the casino, and he has. He can go to  
14 Sabres games, and he has. He can go to dinner, and he does.

15                  And as long as he's got access to his cell phone; as  
16 long as he can see people in public places; as long as he can  
17 speak to people; as long as he can use a computer, he's a danger  
18 through proxies.

19                  And that's what some of the case law I talked about,  
20 we talked about -- that's why witness tampering is so important.  
21 It goes to the integrity of the proceedings that we do here.

22                  There are other acts of witness tampering that are  
23 under active investigation.

24                  As to timelines, well, the last witness testified in  
25 the Grand Jury on March 16th, before that motion was granted.

1                 After that, there is an internal approval process to  
2 get an indictment approved. And the last day of the Grand Jury  
3 was yesterday. So we didn't know that motion was coming.

4                 So that's a coincidence -- an interesting coincidence,  
5 but that's all it was.

6                 One other thing: You know, there is one young lady  
7 who is a witness in the case, who was charged, and all of a  
8 sudden had people who never represented her as a lawyer -- and  
9 she's represented by a lawyer, texting her about if she needs  
10 legal counsel because a member of the defense team is concerned  
11 about the Government threatening and intimidating her.

12                I can assure you the Government doesn't threaten and  
13 intimidate witnesses. We investigate that conduct.

14                And unsolicited texts from attorneys to people who are  
15 already represented, raises issues ethically, maybe even  
16 obstruction.

17                And I'm certainly not saying that Mr. Soehnlein was  
18 involved in any of that --

19               **THE COURT:** Tell me more about that vignette. When  
20 did that happen, Mr. Tripi?

21               **MR. TRIPPI:** That happened after the young lady who  
22 sent these messages was charged in a public complaint and before  
23 she came in for her first proffer with the Government.

24               And her attorney has represented to us -- I believe  
25 this is accurate -- someone interrupt me if I'm wrong -- that he

1 has represented her on every case.

2 So this attorney reaching out, claiming he represented  
3 her before, seeing if she is okay -- he mentioned he talked to a  
4 specific member of Gerace's defense team who said to check in on  
5 her -- and I'm paraphrasing -- because they were concerned about  
6 the Government intimidating her.

7 Now, there is a member of the Gerace defense team,  
8 that there is other interviews happening of witnesses, of people  
9 who are employed by Gerace.

10 Those interviews are happening at Pharaoh's. Think  
11 about that coercive nature. "Come talk to my attorney at  
12 Pharaoh's", the site of the crime, which I'm now allowed to go  
13 to, "and fill out a questionnaire."

14 Do you think we're getting accurate information from  
15 people in that setting? I don't.

16 Those are the types of things that are being reported  
17 to us, Your Honor.

18 Those are the types of things that should be happening  
19 in law offices, not at Pharaoh's.

20 **THE COURT:** Is it your position, Mr. Tripi, that the  
21 factual recitation that I heard from you here today, is much  
22 more fulsome than the factual recitation that I heard from you  
23 in 19-CR-227?

24 And I guess I'm getting back to your earlier comment,  
25 before you sat down before, which is that -- is it the

1 Government's position that the timeline of the other case, being  
2 where we were back then --

3 **MR. TRIPI:** Yes.

4 **THE COURT:** -- that it was the Government's election  
5 not to disclose those details to the defendant at that time, and  
6 potentially weigh that against detention versus a release?

7 **MR. TRIPI:** Yes. Well, first, I didn't have all the  
8 details.

9 **THE COURT:** Right. Some of them you certainly did.

10 **MR. TRIPI:** Some of them I did. I don't have the  
11 transcript in front of me, Your Honor, but I can tell you that  
12 initial information was similar in nature.

13 About a year and a half to two years later in 2021, we  
14 get a second witness, and this month or early last month, we got  
15 a third witness. So along that timeline, the Government learned  
16 additional information.

17 And so I don't know exactly which transcript you're  
18 looking at, so I don't want to misstate it.

19 **THE COURT:** Yep.

20 **MR. TRIPI:** But certainly, as I sit here today, there  
21 is more information the Government knows, and believe it has  
22 proffered more information.

23 For example, we didn't have information about him  
24 repeatedly talking to this woman about her being a snitch. We  
25 had the message.

1                   I probably told you the substance of the message, but  
2 all this other stuff about him blaming this young lady, as well  
3 as another young lady.

4                   And at one point, he blamed his now co-defendant  
5 Bongiovanni. He blamed those three people for being snitches,  
6 for him being a target.

7                  **THE COURT:** And who is he telling that?

8                  **MR. TRIPI:** To one of the witnesses in this case.

9                  **THE COURT:** Okay.

10                 **MR. TRIPI:** And so that's certainly all new  
11 information that we acquired in the last month or so.

12                 **THE COURT:** That loan application is brand new?

13                 **MR. TRIPI:** We got that today.

14                 **THE COURT:** And what about Michalski thing yet, if you  
15 will. Is that material that was at the time --

16                 **MR. TRIPI:** That, I don't know. I don't know what  
17 date of the transcript you're looking at, Judge, but certainly  
18 it took a while to locate those text messages.

19                 I didn't have that at the time. And the Michalski  
20 search warrant, I believe, was earlier. I don't remember the  
21 date of the Michalski search warrant, although it was one of the  
22 last ones we did.

23                 So a lot of this -- there is a lot of information  
24 we've been grinding through. We've been grinding through it.  
25 That was an active investigation too.

1           I would have been constrained to be able to say a lot  
2 of that, because we were under an active investigation of a  
3 judge -- a sitting judge.

4           But certainly, more has been learned since any last  
5 proffer.

6           I know for a fact that I didn't have all of this  
7 information on the one hand.

8           And on the other hand, to the stuff that I did have, I  
9 would have been concerned about witness safety and identifying  
10 people through my proffers.

11          **THE COURT:** So a little bit of both.

12          **MR. TRIPPI:** A little bit of both. I got the dates  
13 here. The Michalski search warrant, that we obtained in Federal  
14 Court, was signed on March 23, 2022.

15          So I don't know how that compares to whatever  
16 transcript you're looking at, Judge, but --

17          **THE COURT:** Mr. Soehnlein, last word on the proffers,  
18 if you will.

19          And in that process, tell me why -- I'm just calling  
20 it a vignette for lack of a better term -- but the Michalski  
21 details or vignette, and the loan application vignette, why  
22 don't those issues matter to me?

23          **MR. SOEHNLEIN:** They don't go to detention, Your  
24 Honor.

25          **THE COURT:** Why not?

1                   **MR. SOEHNLEIN:** Because detention is about return to  
2 court and safety of the community, Your Honor.

3                   To the extent we're talking about safety of the  
4 community, the Government has almost made your point for you.

5                   They talked about him going to a Sabres game; they  
6 talk about him going to the casino. They're watching him here.  
7 It's not just probation that's watching him.

8                   If he would have violated, don't you think they would  
9 have charged him additionally in something less after 2019?

10                  Where is that proof? They are watching him all the  
11 time, Your Honor. Why aren't you hearing about that?

12                  Why aren't you hearing about him improperly, you know  
13 -- in terms of the content of the messages in the indictment,  
14 Your Honor -- now, I don't have a copy of the messages, but I  
15 heard them just like you did.

16                  I heard the person sending the message making a  
17 threat. I heard that. But I didn't hear anything that tied it  
18 back to Gerace.

19                  I heard references to Gerace. But the threat, as I  
20 understood it, came from the person sending the message.

21                  Nowhere did I hear: "Oh, you know, Peter is going to  
22 take you out." "Peter is going to do physical harm to you."  
23 That's not in the message, Your Honor. It's not there. They  
24 don't have that.

25                  And the law, Your Honor, should favor release in these

1 situations. He's been out since 2021.

2 Terms and conditions exist that allow him to prepare  
3 for his case, which is imminent, that safeguard the community  
4 and ensure his return to court, which is exactly where we are,  
5 Your Honor.

6 What we're talking about are not things that are  
7 recent, not things that occurred when he was under supervised  
8 release.

9 And, Your Honor, the fact that the Grand Jury  
10 concluded yesterday, our motion to get -- to obtain access to  
11 discovery in his prior case was earlier this week, I think is  
12 more than just a coincidence, Your Honor.

13 I -- look, I take issue; the Government is going to  
14 take issue with me making issue with this. I take issue with  
15 them having an issue with defense attorney interviewing  
16 witnesses.

17 That's a critical part of a defense attorney's job. I  
18 don't think there is anything coercive of that.

19 I haven't been involved in any of that, but I don't  
20 know there is anything wrong about it, and I will never  
21 acknowledge that -- that there is, Your Honor. I take issue  
22 with them even bringing that up as part of a proffer.

23 A lot of the other proof, Your Honor, is proof that we  
24 are going to vet in this incredibly lengthy trial that we are  
25 going to have, okay?

1                   Where there's explanations, and where Mr. Gerace will  
2 have an opportunity to fully and fairly defend himself.

3                   The Government's proffer, Your Honor, is new to you.  
4 It's just as new to me. It's just as new to him, their spin on  
5 these facts.

6                   Because this material that we're talking about, we  
7 don't have all of it. We don't have the most important stuff  
8 yet. The Government is not rushing to turn it over.

9                   And to the extent that we are getting important things  
10 and we want to try to share them with our client, now we have  
11 this indictment in an attempt to detain Mr. Gerace, presumably  
12 through that June trial.

13                  So, Your Honor, the proof is in the pudding here.  
14 There is no allegation, as near as I can tell, that he -- that  
15 Peter Gerace has done anything wrong while he's been on release  
16 for the other Federal case since 2021.

17                  And so I'm asking you to continue those terms and  
18 conditions, Your Honor. He knows he's being watched. He triple  
19 knows that he's being watched now.

20                  **THE COURT:** Right. And so it's safety to the  
21 community, if you will.

22                  And I'm going to dovetail with that is whether I've  
23 got the confidence level that he can abide by the conditions  
24 that go to that.

25                  And so on the one hand, really, what we have is a

1 record of compliance.

2           **MR. SOEHNLEIN:** Yes, Your Honor.

3           **THE COURT:** And on the other hand, what we also have  
4 is an easy detention argument in almost every other case. So  
5 that's where I am right now.

6           **MR. SOEHNLEIN:** But, Your Honor, the detention  
7 argument -- I don't think it's that easy.

8           Because the facts that would normally support  
9 detention, the case law says that you detain a person in this  
10 situation: One, either because it's a large scale narcotics  
11 trafficking crime.

12           That's not what he's charged with in the new  
13 indictment, okay? So let's put that one aside. Recreational  
14 use is what we're talking about.

15           The second thing is: Threat to the trial process.  
16 Threat to the trial process. That's the LaFontaine. Threat to  
17 the trial process.

18           He's been released for two and a half years awaiting  
19 trial. There has been no threat. The alleged threat came  
20 before the indictment, came a year before the indictment, Your  
21 Honor. That's what we're talking about. Threat to the trial  
22 process. There is none.

23           And so that's why I'm asking you to continue the terms  
24 and conditions, Your Honor.

25           **MR. TRIPI:** I would just take issue with the record of

1 compliance.

2 As I stated, probation would have no way of knowing  
3 that he appears to have committed fraud to the tune of \$2  
4 million to the Small Business Administration while under this  
5 Federal indictment.

6 That crime alone would have at least a 46 to 57 month  
7 guideline range, if he's a criminal history category one. He  
8 might be a two. That's irrespective of the life he's facing on  
9 the indictment 227 and the indictment here.

10 **MR. SOEHNLEIN:** May I be heard on that, Your Honor?  
11 This is the first that we're hearing of this.

12 I spoke with Mr. Gerace on a sidebar, okay? We  
13 believe that there is a lot more to that story, that there is a  
14 lot more nuance around the loan application.

15 We believe there is a lot more communication with the  
16 Federal authorities around the loan. He's not charged with it.

17 I don't have the loan application in front of me here.  
18 I'm learning this as I go, Your Honor.

19 But to the extent you are going to rely on that, I  
20 would ask to have the loan application, and I want to have a  
21 hearing on it, Judge.

22 **MR. TRIPPI:** Second Circuit allows Government proffer,  
23 and that's what we're doing.

24 **THE COURT:** And so what I'm looking at here and what  
25 is new, Mr. Soehnlein, I have facts going to the nature and --

1 and, kind of, the history and characteristics of the defendant.

2 So that's what I'm weighing on the one hand versus  
3 compliance on the other.

4 Do you want to speak to that?

5 **MR. SOEHNLEIN:** I do, Your Honor. Because this is not  
6 something that's new today.

7 Your Honor, the Government has referenced these text  
8 messages in the past, is my understanding. I was not involved  
9 in the case at the time, but I have read the transcripts, and I  
10 certainly have read the local media, that have made reference to  
11 what I assume to be these text messages.

12 These are 2019. The Government's had them for at  
13 least three years. The indictment is new. The text messages  
14 are not new.

15 The content of the text messages are not new. What's  
16 new is what Mr. Gerace has done while he's been released.

17 Mr. Macaluso, do you feel that you do a good job  
18 supervising Mr. Gerace?

19 **PROBATION OFFICER:** Your Honor, just to speak in terms  
20 of probation --

21 **THE COURT:** Yep, yep. I'm going to give you a chance  
22 now. So why don't you go ahead, Mr. Macaluso, and tell me what  
23 your position is generally.

24 **PROBATION OFFICER:** Yeah. Mr. Gerace has had a very  
25 high level of supervision. He is on GPS. He is monitored 24/7.

1           We've done unannounced home contacts; unannounced work  
2 contacts; unannounced drug and alcohol tests. All have been  
3 negative. We view his maps daily, weekly, monthly, in terms of  
4 his GPS mapping.

5           He was on home detention, and then he was switched  
6 over to curfew. Since he's been on curfew and even home  
7 detention, there's been no occasion of violations, where he's  
8 stepped out of the house or had any curfew violations.

9           All tests have been negative, and he's followed all  
10 release conditions in terms -- as they've been set forth by this  
11 Court.

12           So there has been no non-compliance on our end in  
13 terms of his supervision and following the rules set forth by  
14 Your Honor.

15           **MR. TRIPI:** Judge, stated another way, they know he  
16 hasn't tested positive for drugs, and he goes to dinner where he  
17 says he's going. And he's got this earned leave that allows him  
18 to do that.

19           **PROBATION OFFICER:** Well, he's on curfew now, Your  
20 Honor, so he can come and go as he pleases.

21           **MR. TRIPI:** Oh, he's even less. Earned leave was when  
22 it was supposed to be detention. Now, it's just come and go  
23 whenever you want.

24           **PROBATION OFFICER:** He's on a 6 a.m. to 8 p.m. curfew  
25 as you set, Your Honor.

1                   **THE COURT:** So the last thing you said, Mr. Soehnlein,  
2 was about not having seen the loan application related  
3 documents.

4                   And I want to be sure: Are you asking to continue  
5 this detention hearing or not?

6                   **MR. SOEHNLEIN:** In the event that Your Honor is going  
7 to rely on the loan applications and the allegations around the  
8 loan --

9                   **THE COURT:** I'm going to rely on everything that I've  
10 heard here.

11                  **MR. SOEHNLEIN:** You are going to rely on everything  
12 you've heard? Then, Your Honor --

13                  **THE COURT:** So you have think about that,  
14 Mr. Soehnlein, as well. So talk to your client, if you like.

15                  **MR. SOEHNLEIN:** Thank you, Judge.

16                  (Discussion off the record.)

17                  **MR. SOEHNLEIN:** Thank you, Your Honor. I've spoken  
18 with Mr. Gerace, and we would like to continue the hearing.

19                  I'd like an opportunity to see the loan and further  
20 opportunity to review the Government's lengthy proffer in  
21 support of detention.

22                  **THE COURT:** Okay. So the loan application you will  
23 get from your own client, I assume. And then you will ask the  
24 court reporter for the transcript? Is that what you are telling  
25 me?

1                   **MR. SOEHNLEIN:** I'm going to ask the Court for a  
2 transcript, yeah.

3                   **THE COURT:** Okay. All right.

4                   So do you have anything to say on that application for  
5 a continuance, Mr. Tripi?

6                   **MR. TRIPPI:** No, Your Honor. I have no objection to  
7 the defense request, and we'll have no problem giving them the  
8 loan application, if that's easier.

9                   **THE COURT:** Okay. During the continuance, the  
10 defendant shall be detained under the statute.

11                  You are aware of that, Mr. Soehnlein?

12                  **MR. SOEHNLEIN:** I spoke with Mr. Gerace, and we  
13 understand that.

14                  I also spoke with Mr. Macaluso from probation. And  
15 probation indicated that in the event that Your Honor were  
16 willing to do so, they would be able to coordinate home  
17 confinement for Mr. Gerace during the period of time, until you  
18 could get him back.

19                  I don't have my Federal statute book immediately in  
20 front of me to know whether or not there is an exception or not,  
21 Your Honor.

22                  And I would love an opportunity to research and be  
23 heard on that, but I can only report to you basically the facts  
24 as I know them.

25                  **THE COURT:** Right. And the way I read subsection (f)

1 of 3142, you don't have a lot of wiggle room there in this  
2 posture.

3 Mr. Tripi, do you see it the same way?

4 **MR. TRIPI:** Yes, Judge. I think he shall be detained  
5 pending the determination of the Government's motion for  
6 detention.

7 **THE COURT:** Well, where I'm at is the flush language  
8 after (2) (b): During a continuance, such person shall be  
9 detained.

10 **MR. TRIPI:** Yes. Up to three days, if there is a  
11 Government request for adjournment, and five days if the defense  
12 requests it.

13 **THE COURT:** Right. So we can come back here pretty  
14 early next week, if you like.

15 **MR. SOEHNLEIN:** I would like, Your Honor.

16 **THE COURT:** All right. We can get you in probably  
17 Monday.

18 **MR. SOEHNLEIN:** That sounds good.

19 **THE COURT:** Everybody okay, Monday afternoon?

20 **MR. TRIPI:** I think so, Judge.

21 **MR. SOEHNLEIN:** Yes, Judge.

22 **MR. TRIPI:** Let me see if there is a time conflict.

23 **THE COURT:** All right. How about 1:30?

24 **MR. TRIPI:** That will be fine. Thank you.

25 **MR. SOEHNLEIN:** That's fine.

1                   **THE COURT:** Okay. And I think either way -- I'm  
2 granting the motion for a continuance. We'll see you on this  
3 issue to be continued Monday at 1:30.

4                   I should tell you now, though, that Judge Roemer is  
5 ready for you on Tuesday for a schedule. So either way on  
6 Monday, you will be seeing Judge Roemer at 2:00 o'clock on  
7 Tuesday for scheduling and whatever else you need to talk to him  
8 about.

9                   **MR. TRIPI:** Okay.

10                  **THE COURT:** So that's Judge Roemer piece of it.  
11 Speedy trial does not need to be addressed because of the  
12 continuance and --

13                  **MR. TRIPI:** The pending motion for detention, Your  
14 Honor.

15                  **THE COURT:** We've got the pending motion for the  
16 detention, yeah.

17                  Should we adjourn the Curcio, step one, or should we  
18 do it now, the status conference on the Curcio, the thing that  
19 was scheduled for 3:00 o'clock today?

20                  We can do it now, or we can do it after our  
21 continuation on Monday afternoon.

22                  **MR. TRIPI:** I'll defer to Mr. Soehnlein.

23                  **MR. SOEHNLEIN:** I don't feel strongly about it, Your  
24 Honor. Whatever you want to do.

25                  **THE COURT:** Why don't we do it then.

1                   **MR. TRIPI:** Okay.

2                   **THE COURT:** Why don't we do it then. All I would do  
3 now is a little bit and then call somebody like maybe Kevin  
4 Spitler, since he was the Curcio counsel last time, I would  
5 reach out to him.

6                   In the meantime, Mr. Tripi, bring with you your  
7 conflict list maybe?

8                   **MR. TRIPI:** Yes. I'll work on that. I'll get that  
9 squared away.

10                  Judge, the only thing I want to flag was --

11                  **THE COURT:** I know. I'm flipping kind of over into  
12 the other case, which we haven't even called yet so --

13                  **MR. TRIPI:** There may be a need for -- just depending  
14 on Your Honor's thoughts, also someone to be contacted for the  
15 witness, potentially, that created the issue.

16                  **THE COURT:** Okay. Just be mindful of that on the  
17 Curcio side of things.

18                  And my plan would be to call Kevin Spitler, if that --  
19 if for some reason he's conflicted out now, I need to know that.

20                  **MR. TRIPI:** I don't believe he is, but I'll double  
21 check.

22                  **THE COURT:** All right. Anything else on this 23-CR-37  
23 case?

24                  **MR. TRIPI:** No, Your Honor. Thank you.

25                  **MR. SOEHNLEIN:** Nothing else, Your Honor. Thank you.

1                   **THE COURT:** Okay, folks. So in the meantime,  
2 Mr. Gerace is going to be in Marshal's custody, I believe, at  
3 this point.

4                   No?

5                   **MR. TRIPPI:** He is -- I think that that -- thank you,  
6 Your Honor.

7                   **THE COURT:** Yes? Okay. All right. Very good. Thank  
8 you.

9                   **MR. TRIPPI:** Thank you, Your Honor.

10

11                   (Proceedings concluded at 2:18 p.m.)

12                   \* \* \*

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2 In accordance with 28, U.S.C., 753(b), I certify that these  
3 original notes are a true and correct record of proceedings in  
4 the United States District Court for the Western District of  
5 New York before the Honorable John L. Sinatra, Jr.

6

7

8

9

10 s/ Bonnie S. Weber  
Signature

March 25, 2023  
Date

11  
12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter  
United States District Court  
14 Western District of New York

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# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, \* Docket No.  
\* 1:23-cr-00037-JLS-MJR-1  
\*  
\* Buffalo, New York  
v. \* March 27, 2023  
\* 1:36 p.m.  
\*  
\* PETER GERACE, JR., \* DETENTION HEARING  
\* CONTINUATION  
\*  
\* Defendant (1). \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

TRINI E. ROSS,  
UNITED STATES ATTORNEY,  
By DAVID RUDROFF, ESQ.,  
JOSEPH M. TRIPI, ESQ.,  
NICHOLAS COOPER, ESQ.,  
Assistant United States Attorneys,  
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Appearing for the United States  
And  
JORDAN ALAN DICKSON, ESQ.,  
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13  
14 The Courtroom Deputy: KIRSTIE L. HENRY

15  
16 The Court Reporter: BONNIE S. WEBER,  
17 Notary Public,  
18 Robert H. Jackson Courthouse,  
19 2 Niagara Square,  
20 Buffalo, New York 14202,  
21 Bonnie\_Weber@nywd.uscourts.gov.

22  
23 Proceedings recorded by mechanical stenography,  
24 transcript produced by computer.

25  
26 (Proceedings commenced at 1:36 p.m.)

27  
28 **THE CLERK:** All rise.

29 The United States District Court for the Western  
30 District of New York is now in session. The Honorable  
31 John Sinatra presiding.

32 **THE COURT:** Please be seated.

33 **THE CLERK:** The Court advises parties and listeners  
34 that they are strictly prohibited from recording these  
35 proceedings in whole or in part by any device.

1           In United States versus Peter Gerace, Jr., case number  
2 23-CR-37, we're here for a continuation of a detention hearing.

3           Counsel, please state your appearances for the record.

4           **MR. TRIPI:** Joseph Tripi, David Rudroff, and  
5 Nicholas Cooper for the United States. Good afternoon,  
6 Your Honor.

7           **MR. SOEHNLEIN:** Good afternoon, Your Honor.

8 Eric Soehnlein for Mr. Gerace.

9           **MR. COHEN:** Good afternoon, Your Honor.

10 Steven M. Cohen and Tyler Eckert for Mr. Gerace.

11           **THE COURT:** Okay. Good afternoon, Counsel. Good  
12 afternoon, Mr. Gerace.

13           Did I miss somebody who needed to make an appearance?

14           **MR. HARRINGTON:** James Harrington. I'm here just  
15 observing.

16           **THE COURT:** Okay. All right. Just pick a better  
17 seat, Mr. Harrington? That's all? Did you just pick a better  
18 seat?

19           **MR. HARRINGTON:** Yep.

20           **THE COURT:** Got it. All right.

21           So we're going to pick up where we left off on Friday  
22 in this detention hearing.

23           And, Mr. Tripi, have you supplied the loan documents  
24 to Mr. Soehnlein?

25           **MR. TRIPI:** Yes, we did.

1                   **THE COURT:** Okay. Is there anything I need to know  
2 further on those loan documents from you, Mr. Tripi, or you,  
3 Mr. Soehnlein?

4                   **MR. TRIPI:** Not from us. If you have anything from  
5 Mr. Soehnlein, I would like an opportunity to briefly respond.

6                   **MR. SOEHNLEIN:** Well, Your Honor, this is the  
7 continuation of the detention hearing. And with reflection, we  
8 have a lot to say.

9                   With respect to the loan documents, Your Honor, there  
10 is a number of factors that the Court needs to consider, but I  
11 think they demonstrate more of history of compliance than they  
12 do any effort to not comply with the law or not to comply with  
13 supervised release.

14                  As Your Honor may understand, the EIDL program was  
15 part of the Federal Government's COVID outreach program -- part  
16 of the COVID Assistance Program.

17                  Mr. Gerace, like many other business owners, was  
18 solicited by a private bank to apply for that. Mr. Gerace  
19 worked with that institution to fill out the application.

20                  He worked with his accountant. He worked with a loan  
21 broker through that institution. He didn't fill out any of the  
22 applications on his own, Your Honor. That was the initial  
23 application.

24                  Over time, as the program became reauthorized,  
25 Mr. Gerace also engaged the help of HoganWillig Law Firm. And

1 that law firm, at times, assisted him in preparing the  
2 applications.

3 The actual questions on the applications, Your Honor  
4 -- and I can't emphasize enough that this is an online  
5 application; this is not a paper application, okay.

6 And I also can't emphasize enough that this is a COVID  
7 era program. Meaning -- I don't want to say things are the Wild  
8 West, but things are not necessarily well understood.

9 The questions with respect to whether or not his  
10 business would have had to tick a box because it was sexual  
11 nature, things like that; Mr. Gerace has a good faith basis to  
12 believe he didn't have to click that box.

13 Both by the volume of sales -- because most of the  
14 revenue from his business doesn't come from dances or things of  
15 that nature, and also in understanding from the loan officers  
16 and other professionals that he had engaged to fill out that  
17 application.

18 With respect to the felony conviction, it's  
19 Mr. Gerace's belief that he only had to check that box if the  
20 felony was in the last ten years, and at the time that he was  
21 filling out the application, it was not.

22 Once again, he has a good faith basis for relying on  
23 the assistance of others, professionals, in that regard.

24 And finally, Your Honor, with respect to the  
25 Government's point that somehow the PPP denial, you know, his --

1       Mr. Gerace's denial of the PPP loan should have played into the  
2       EIDL process, that was not in any way communicated or consistent  
3       with the advice that he got when he was applying.

4                   So, Your Honor, with respect to those EIDL loans, to  
5       the extent there is anything wrong with them, you know,  
6       Mr. Gerace has a good faith basis for believing he did  
7       everything right.

8                   More importantly, Your Honor, this is not a grant;  
9       this is a loan. Mr. Gerace has been repaying it monthly with  
10      interest.

11                  There is no allegation that the money was used  
12      improperly. He continues to make payments every month. He has  
13      not heard from anybody, whether it be the SBA or the Department  
14      of Justice or otherwise, before court on Friday, that there was  
15      anything wrong with this application or the process that he  
16      followed.

17                  Your Honor, with reflection, we also have a number of  
18      comments on other proof that was offered by the Government on  
19      Friday.

20                  Having had an opportunity to review it with  
21      Mr. Gerace --

22                  **THE COURT:** Hold on there. Let's do one topic at a  
23      time.

24                  So Mr. Tripi, regarding the loan applications, any  
25      response?

1                   **MR. TRIPI:** Yes, Your Honor. As I indicated on  
2 Friday, there is an online application and all of Mr. Gerace's  
3 information to include phone numbers; his e-mail address is  
4 entered in there.

5                   And the question asks: Applicant does not present  
6 live performances of a prurient sexual nature -- sexual nature  
7 or derived directly or indirectly more than de minimis gross  
8 revenue through the sales of products or services, or the  
9 presentation of any depictions or displays of a prurient sexual  
10 nature.

11                  And that box is answered: Yes. In other words,  
12 denying that he's involved in that business.

13                  Now, all the information suggests Mr. Gerace filled  
14 this out. But if you have someone in your agency filling it out  
15 for you, you are responsible for making sure that it's accurate.

16                  So I guess that will be a defense for another day when  
17 this case is charged, but from the bail report in this case,  
18 Mr. Gerace reported, I think, making \$45,000 a month.

19                  So Pharaoh's was his employment. He reported, I  
20 think, making \$45,000 a month as the hundred percent owner of  
21 Pharaoh's.

22                  And it's a strip club, so I don't understand how he  
23 can answer "yes" to: Applicant does not present live perform --  
24 performances of a prurient sexual nature.

25                  Now, then it gets on -- and if he would have checked

1 no, the online portal would not have allowed him to progress  
2 with the application.

3 So if he acknowledged that that's what Pharaoh's was  
4 about, he wouldn't have been able to proceed past that screen.

5 **MR. SOEHNLEIN:** Your Honor, if I may be heard on that  
6 point?

7 **THE COURT:** One topic at a time, Mr. Soehnlein. I'll  
8 come back to you and give you the last word on it.

9 **MR. TRIPPI:** So then there is another question on  
10 there: Applicant is not engaged in illegal activity. And he --  
11 it's "yes".

12 We contend that that also was a false statement. That  
13 Pharaoh's was engaged in illegal activity, as reflected by the  
14 indictment, that would have been returned some time after that.

15 But at the -- at the -- one of the last questions is  
16 -- it's very clear -- not within the last ten years or -- it's  
17 for any criminal offense: Other than a minor vehicle violation,  
18 have you ever -- so two words -- any and ever.

19 I mean, he went to St. Joe's, so he understands what  
20 those words mean.

21 Any criminal offense: Have you ever been convicted,  
22 pled guilty, pled nolo contendere, been placed on pretrial  
23 divergent, or been placed on any form of parole or probation.

24 It's "yes" to all of those things. He was on  
25 supervised release. He was -- for his Federal conviction. He

1 was on probation for his State assault conviction.

2 He was convicted of a State misdemeanor. He was  
3 convicted of a Federal felony, so all of those should have been  
4 "yes".

5 And if he had someone filling out the form -- which, I  
6 highly doubt -- for him, they are under the obligation to do it  
7 accurately.

8 He's responsible, but -- see, in our responses we also  
9 obtained documents regarding his communications with the SBA.  
10 And it's Mr. Gerace, at his e-mail address, at yahoo.com,  
11 e-mailing them.

12 It's Mr. Gerace, calling -- and we have their  
13 communications -- about his loan.

14 It's on -- when he asks for -- in June -- June 10th,  
15 he reaches out to them to check on the status of his April 5th,  
16 2020 loan.

17 And there's notes in there. So he's the one reaching  
18 out, and then he's the one who signs the loan documents on  
19 June 12th, 2020.

20 **THE COURT:** Which statements -- in the meantime, while  
21 we're waiting for the ELMO to boot up -- which statements,  
22 Mr. Tripi, were made in July of 2021, after Mr. Gerace was on  
23 pretrial release on the 19-CR case?

24 **MR. TRIPPI:** You want me to fast forward to 2021?

25 **THE COURT:** Yes.

1                   **MR. TRIPI:** Yes. So on August 7th, he signed a loan  
2 modification to increase the loan. So just real quick, before I  
3 jump right to that --

4                   **THE COURT:** All right.

5                   **MR. TRIPI:** I'm showing you the document for the  
6 June 12th application, which he signed it. He's signing: Peter  
7 Gerace, owner/officer, June 12th.

8                   Now, I'll fast forward to the 2021 --

9                   **THE COURT:** And for chronology's sake, Mr. Gerace is  
10 arrested and put on pretrial release in the 19-CR case, when in  
11 2021 -- March?

12                  **MR. TRIPI:** He was arrested -- the indictment was  
13 returned, I believe, February 25th. He was arrested by March  
14 5th, 2021 and put on release conditions.

15                  **THE COURT:** All right.

16                  **MR. TRIPI:** All right. So fast forwarding to the  
17 August 7th.

18                  So August 7th, he signs a loan modification, which I'm  
19 putting up on the screen now. "Peter Gerace", he signs it.

20                  It says that the undersigned agrees to be bound by the  
21 terms and conditions herein during the term of this loan, and  
22 further agrees that no provision stated herein will be waived  
23 without prior consent of the SBA.

24                  In bold: Under penalty of perjury of the United  
25 States of America, I hereby certify that I am authorized to

1 apply for and obtain a disaster loan on behalf of borrower in  
2 connection with the effects of the COVID-19 emergency.

3 It's signed by Peter Gerace in his personal capacity,  
4 Pharaoh's GC, Inc.; August 7th, 2021.

5 By that point, he's been on pretrial conditions set by  
6 a Florida magistrate judge and Judge Roemer for about five  
7 months. He's clearly indicted.

8 **THE COURT:** And when are the denials of the  
9 indictment, supervised release, parole, et cetera -- when are  
10 those denials occurring?

11 **MR. TRIPPI:** Those denials occurred during the initial  
12 application, but there is also in this loan document here, there  
13 is a statement -- I just need to find it -- certifying that  
14 all -- there's been no substantial adverse change in borrower's  
15 financial condition since the date of the application of this  
16 loan.

17 Adverse changes include, but are not limited to  
18 judgment liens, tax liens, mechanics liens, bankruptcy,  
19 financial reverses for arrest or conviction of a felony, et  
20 cetera.

21 So here's the certification that precedes that suture  
22 /THA\*EUFPBLG that I just showed you. And it reads, as I just  
23 stated: Borrower certifies that there has been no substantial  
24 adverse change in borrower's financial condition -- I'm skipping  
25 over the parens -- since the date of the application of this

1 loan -- which I stated previously was the April 5th, 2020 --  
2 adverse changes include, but are not limited to judgment liens,  
3 tax liens, mechanics leans, bankruptcy, financial reverses,  
4 arrests, or conviction of felony, et cetera.

5 All representations in the borrower's loan  
6 application -- and that would date back to the original  
7 application -- including all supplementary submissions are true,  
8 correct, and complete, and are offered to induce the SBA to make  
9 this loan.

10 No claim or applications for any other compensation  
11 for disaster losses has been submitted to or requested of any  
12 source, and no such other compensation has been received, other  
13 than that which borrower has fully disclosed to the SBA.

14 Now, we will have to look further into that, because  
15 he was separately looking into PPP, so that might raise that --  
16 that question as well.

17 **THE COURT:** All right. Let's wrap up on the --

18 **MR. TRIPI:** On the loan?

19 **THE COURT:** -- on the loan issue. Anything else from  
20 you, Mr. Tripi?

21 **MR. TRIPI:** No, Judge. I'll end it there.

22 **THE COURT:** Mr. Soehnlein, last word on the loan  
23 issue --

24 **MR. SOEHNLEIN:** Unfortunately, it's going to be more  
25 than a word, Your Honor. I apologize, but I think I need to

1 make the record clear on this.

2           The loan application, Your Honor -- the original loan  
3 application, it's done online. Mr. Gerace is doing it in  
4 consultation with other experts.

5           The reapplications come when the private bank that the  
6 loan is made through solicit people like Mr. Gerace for  
7 additional funds.

8           The additional funding comes so easily; it's click the  
9 box. It's check-the-box-type stuff.

10          Maybe, Your Honor, maybe Mr. Gerace missed something,  
11 although we don't think he did, okay? We think that he relied  
12 in good faith on his experts and consultants.

13          More importantly, Your Honor, I don't think that this  
14 issue speaks to detention. To the extent that there is anything  
15 that may have been done wrong, Mr. Gerace did it in error.

16          It doesn't evidence dangerousness. It doesn't  
17 evidence any desire to violate supervised release terms, and we  
18 believe that the story shows a desire and an effort to comply,  
19 which is exactly what probation has told you Mr. Gerace has done  
20 while he's been on supervised release, Your Honor.

21          I'm hard pressed to find a case in this district where  
22 probation has taken a position that the defendant should be  
23 released, and the Government has taken a position, as here, that  
24 probation doesn't do a good enough job.

25          That's a novel one to me, Your Honor. Particularly

1 given the high degree of supervision that Mr. Gerace has  
2 experienced, including the monitoring, the GPS monitoring, and  
3 things like that.

4 I simply don't think that this issue speaks to  
5 detention. It doesn't speak to dangerousness. It doesn't speak  
6 to witness tampering. It doesn't speak to return to court. It  
7 doesn't speak to safeguarding the community, Your Honor.

8 I believe that this is a red herring to try and keep  
9 Mr. Gerace incarcerated through the trial.

10 **THE COURT:** Well, we've kind of painted Mr. Macaluso  
11 in a box. He was never consulted on Friday about his  
12 recommendation in this 23-CR case, and it's on my list of things  
13 to do to ask him.

14 Mr. Macaluso, in the 23-CR case, does probation have a  
15 recommendation?

16 **PROBATION OFFICER:** Yes, Your Honor. We would  
17 recommend that he be released on all his previous conditions,  
18 based on -- there is no violation here, because the conduct is  
19 from 2019 and his supervision started in 2021.

20 And as previously stated Friday, the two years he's  
21 been on supervision, he's had no violations. There has been no  
22 positive drug tests, no issues.

23 He's been extremely compliant in terms of the  
24 conditions set by this court. He's moved from home detention to  
25 curfew, and he's been doing well.

1                   **THE COURT:** Thank you, Mr. Macaluso.

2                   All right. Is there anything left? I see there's  
3 something new on the overhead.

4                   **MR. TRIPPI:** I put something on the screen, Judge,  
5 because -- this is just one example of Mr. Gerace calling on  
6 April 21st. This is the note from the SBA.

7                   Mr. Gerace called in regards to requesting more funds  
8 April 21st, 2021 via e-mail to -- and it gives the e-mail.  
9 There has not been anything since, so this is him following up.  
10 Mr. Gerace was the one doing this activity.

11                  And just to answer the probation issue for a moment;  
12 there are plenty of times when we disagree with probation.

13                  I'm unaware of a case where someone has a pending  
14 indictment and is charged with witness tampering, and the  
15 Government has proffered continuing criminal activity, that went  
16 undetected by probation, where the person was not detained and  
17 where probation had not reversed their recommendation to some  
18 extent, and so that's new for me.

19                  **THE COURT:** All right. The next topic is something  
20 else that caught my eye when I was reading the transcript from  
21 Friday.

22                  And that is -- this suggestion, it's at pages 36 and  
23 37, but I'll just give you the topic and I kind of want to walk  
24 through this a little more slowly.

25                  It's the proffer where someone -- some lawyer in town

1 is contacting one of your witnesses, Mr. Tripi, and offering  
2 himself to that witness in case she needs representation.

3 Somebody who -- a witness who is represented already.  
4 And the way I kind of read that proffer -- and you're going to  
5 give it to me again -- is that that defense lawyer says that  
6 he's already spoken to someone on Gerace's team, and he's  
7 reaching out to see if she needs counsel.

8 And, obviously, the concern there is -- even just from  
9 the ethical side is -- is you can't thrust yourself upon a  
10 client, unless you've represented that client beforehand.

11 Mr. Tripi, did I walk through that in my mind  
12 correctly when I was reading it?

13 **MR. TRIPI:** Yes. And now I'll elaborate on that.

14 **THE COURT:** Or should we slow it down and take a  
15 closer look at it?

16 **MR. TRIPI:** I will.

17 **THE COURT:** All right.

18 **MR. TRIPI:** So there's a witness in this indictment.  
19 Frankly, it's the person that actually transmitted the messages.

20 That person was approached by the FBI before being  
21 charged by a criminal complaint.

22 Unclear to me as I stand here, whether it was post  
23 approach by the FBI or post charging by criminal complaint, but  
24 that particular person was represented by a particular defense  
25 attorney.

1           That particular defense attorney, who currently  
2 represents the witness, has indicated to prosecutors that I'm  
3 working with, that he has represented this individual in every  
4 criminal matter that this individual has had.

5           All right. So the current lawyer made that  
6 representation to us, and the current lawyer provided the text  
7 messages to us by screenshot from his client.

8           And those screenshots -- I don't have in front of me,  
9 so I'm going to do my best to paraphrase -- okay. I have them  
10 here. Thank you.

11           So, I have them in front of me now. Those text  
12 messages were forwarded from the witness to her attorney by  
13 screenshot, and then forwarded them to us.

14           And the screenshots were from a person who is  
15 apparently an attorney, but also someone who plays in a band in,  
16 like, the local bar scene.

17           The witness indicated she knows this attorney/person  
18 who is in the band from the bar scene, not from prior  
19 representation.

20           So that's what's been represented to us between the  
21 witness and her current attorney. And the current attorney is  
22 Michael D'Amico. No problem putting his name on the record.

23           But the text message -- the solicitation, so-to-speak,  
24 reads: "Hey, (insert name). It's (insert name). How have you  
25 been? Are you free to talk at all today?

1           I just want to go over something and make sure you're  
2 okay, and let you know, if you need me, I'm here."

3           The witness responds: "I'm actually headed to  
4 Mike D'Amico at 1:30. After I meet with him, I can give you a  
5 call, but I just had a surgical procedure, so I basically can't  
6 walk."

7           This individual then texts: "Oh my God, I'm sorry to  
8 hear that, honey. Where are you living now? Are you okay  
9 otherwise?

10          I know Mike well. Great guy and great attorney. I'm  
11 guessing he's meeting you for the same concern I had, as I got a  
12 call from Peter Gerace's attorney, Steve Cohen, concerning that  
13 the Feds might be trying to intimidate you, or even just bring  
14 you in for questioning.

15          He saw that I was your attorney in the past and  
16 reached out to me for me to make sure you were okay, and knew  
17 I'm here if you need representation. And I want you to know I'm  
18 here, even if you just need a friend as well."

19          Then as explained to us, the witness meant to text  
20 Mike D'Amico, who has the same first name as this attorney, and  
21 wrote: "By the way, never used him for an attorney. That's  
22 bullshit."

23          The person who reached out got that text, and said,  
24 "Never used who as an attorney?"

25          And the witness explained to us -- the witness thought

1       on her feet, and wrote the following: "Thought you meant Steve  
2 Cohen, LOL. Sorry. I'm confused. Have a great day." Trying  
3 to end the communications.

4              This attorney follows up: "No sorry, hon. I meant  
5 Steve saw that you had me as your attorney and that's why you  
6 reached out to me.

7              You have a great day too and let me know how things  
8 go. I'm here if you need, babe."

9              The witness responds: "Thanks. I'm just focusing on  
10 my recovery."

11             The attorney writes: "Absolutely. That's the most  
12 important thing right now. If you need anything, I'm here."

13             Those were the communications that were provided by  
14 Mike D'Amico to us.

15             Mr. D'Amico further stated: To his knowledge, he's  
16 represented this particular witness in every case she's had  
17 since she was a teenager.

18             **THE COURT:** Okay. Let's talk about that topic.

19             Mr. Soehnlein, anything that you wish to say on that  
20 topic?

21             **MR. SOEHNLEIN:** Your Honor, it's -- obviously we don't  
22 have the texts and this is the first that I've heard them. And  
23 we certainly would like to have them.

24             However, the thing that jumps out at me, Your Honor,  
25 is that nowhere did this attorney say that she wanted to help

1 the witness lie, or that he wanted to help the witness protect  
2 Peter, or that she wanted to do anything of that nature.

3           Clearly, what I'm understanding, there was some  
4 previous personal relationship, or else -- presumably, the  
5 witness would not have responded.

6           It was an amicable relationship, or else the witness  
7 would not have responded. And I didn't hear -- or -- yeah, I  
8 didn't hear any text that would indicate that the attorney was  
9 trying to suborn perjury, or suggest obstruction, or even  
10 suggest that they not meet with Federal authorities in this  
11 case.

12           Obviously, I don't know the blow-by-blow. And if  
13 Your Honor wants more information about it, I'd love an  
14 opportunity to review it with the defense team and provide you  
15 with additional information.

16           But at first blush, it doesn't appear to be any form  
17 of witness tampering and more important -- perhaps most  
18 importantly, Your Honor, there is nothing there that suggests it  
19 came from Mr. Gerace himself.

20           The suggestion is that it came from Gerace's attorney.  
21 It does not say Peter told me to call you; Peter told me we had  
22 to talk; Peter tells you to not talk to Federal authorities,  
23 that's not anywhere in the message, Your Honor.

24           And so I don't believe that that should weigh against  
25 Mr. Gerace in Your Honor's calculus on this issue.

1                   **THE COURT:** All right. I'm not going to consider that  
2 issue, but I'm just simply going to say, as an  
3 issue-spotting-kind-of-person, it does cause me some concern, so  
4 I would advise the defense team to be careful on that front.

5                   All right. So next is Mr. Soehnlein -- other topics,  
6 any proffer, any evidence, that sort of thing.

7                   **MR. SOEHNLEIN:** I do have a proffer, Your Honor. And  
8 I think Your Honor knows me, I try hard to be succinct.

9                   But the thing that I note from Friday is that most of  
10 what the Government relies upon is consistent with prior  
11 proffers that the Government has made in favor of detention at  
12 other times in this case.

13                  It's not new information, Your Honor. It may be  
14 amplified information, but it's not new. It's stuff that was  
15 known to probation when probation made the recommendation for  
16 Mr. Gerace's release.

17                  It's things that were known to Your Honor or  
18 allegations that were known to Your Honor.

19                  More importantly, Your Honor, the Government's  
20 argument relies on their position that probation can't and does  
21 not do its job.

22                  That's a new one to me, given the number of cases that  
23 they rely on probation's recommendation in favor of detention.  
24 This is the first time that that's happened.

25                  Your Honor, I wanted to show you -- I'd also like the

1       ELMO --

2                   Mr. Tripi, if I can use the ELMO --

3                   **MR. TRIPI:** Certainly.

4                   **MR. SOEHNLEIN:** In my view, Your Honor, the most  
5                   serious allegation had to do with what the Government had to say  
6                   about Mr. Tripi -- or sorry, Mr. Gerace's ex-wife.

7                   And it's there. He had a son with the young lady, and  
8                   I'll get to how he assaulted her in a moment -- but while she  
9                   was afraid of him and on the run in fear for her life, hiding  
10                  out, the judge -- excuse me -- this defendant did a pro se  
11                  motion for a name change, to have his son's name changed to this  
12                  name.

13                  That judge granted it the same day. The mother was  
14                  nowhere to be found, but of course, it was applied for and  
15                  granted the same day.

16                  Your Honor, that's a hundred percent untrue. The  
17                  woman is sitting right there. That's Mr. Gerace's ex-wife.  
18                  We've spoken with her. This is not true.

19                  This is not how the name change happened. It took  
20                  several months. They were both there. She didn't fear for her  
21                  life. That's not true. That's not accurate.

22                  She is sitting right there, supporting Mr. Gerace's  
23                  release, because they co-parent his 16-year-old son, Nick, who  
24                  lives primarily with Mr. Gerace.

25                  Further down, the Government says in 2010, there was

1 information that the defendant was traveling with a young lady  
2 from New York City.

3 There was a tip she had drugs in a false compartment  
4 coming through the airport. At that time, law enforcement had a  
5 canine do a sniff.

6 The dog didn't alert, and they decided not to step in  
7 and stop and question, but the information about the defendant  
8 having a supplier in that timeframe, there is other information  
9 that suggests that -- that I've reviewed in this  
10 investigation -- so looking back at that tip, it didn't turn out  
11 to be anything. I will consider asking you to consider that  
12 part of his history.

13 Your Honor, that was kind of a throwaway ploy at the  
14 time, and I guess I didn't catch it as it was going by.

15 But this tells us something about the case, Your  
16 Honor. This tells us that Mr. Gerace has been under  
17 investigation for Federal law enforcement for drugs since at  
18 least 2010.

19 It's 2023. In that timeframe, he's been supervised by  
20 probation. There have been multiple search warrants on his  
21 homes and businesses.

22 There have been some probation violations --  
23 supervised release things. There's no drugs here, Judge.  
24 There's no drugs. There's no controlled buy. There's no  
25 cocaine in the courtroom.

1           There's no massive quantities of anything. There's no  
2 media of a buy-and-bust from 2010 until now.

3           The Government wants to rely on an unsubstantiated  
4 allegation from 2010 to keep Mr. Gerace locked up. This is  
5 where we're at. There's no there there.

6           **THE COURT REPORTER:** I'm sorry, what did you say?

7           **MR. SOEHNLEIN:** There is no there there. It's  
8 colloquialism. Sorry. Maybe not a good one.

9           Your Honor, with regard to the new allegations, these  
10 are things that the Government has had for four years, as I've  
11 said.

12           These are messages the Government has referenced in  
13 the past and spoken about in front of Your Honor.

14           The text messages don't -- they do not in any way  
15 indicate that Mr. Gerace intends to do violence. They don't  
16 indicate that Mr. Gerace intends to do anything to this witness.

17           What they say is that whoever this third party was,  
18 might do some violence. And it references things that I believe  
19 show personal animus between the two women involved that don't  
20 involve Mr. Gerace.

21           The Government is going to say, well, we trust but  
22 verify, and now we're verified.

23           Given the scope and timing of this investigation,  
24 Your Honor, I have to believe the Government has spoken with  
25 this witness more than one time. Perhaps more than twice.

1           It leads me to believe that the first time they spoke  
2 with her, she probably either denied wrongdoing, denied the  
3 message, or made some other statement to law enforcement that  
4 did not corroborate the tampering charge.

5           If the Government is going to rely on her now, I think  
6 Your Honor ought to see all of the 302 material, which isn't  
7 here. You didn't see it.

8           Your Honor, I want to talk about proof. What the  
9 Government has -- they've offered words. They've made some very  
10 serious, very scandalous allegations.

11          We know that at least some of them were wrong. She is  
12 here; she can tell you that they are wrong. That's on the one  
13 hand -- remember, you were weighing factors. The allegations.

14          On the other hand, we have probation and a history of  
15 compliance while on supervised release. We have probation  
16 saying, you should let him out, Judge. There is no need to  
17 detain him.

18          Alternatives exist. Alternatives to incarceration  
19 exist that can secure his return to court and safeguard the  
20 community.

21          We would submit it's a continuation of the same  
22 conditions, but Your Honor is certainly capable of fashioning  
23 some other appropriate way of monitoring that would keep him  
24 from being incarcerated.

25          Your Honor, Mr. Gerace is not in great health, as I'm

1 sure you understand. He has cardiac issues. He suffers from  
2 depression.

3 And as is well-documented, incarceration in local  
4 facilities is particularly hard for people who have those health  
5 concerns, particularly in the era of COVID.

6 What's more though, Your Honor, is he's the sole  
7 provider for his 16-year-old son. He has him 28 days out of the  
8 month. He's had custody of his son since he was four years old.

9 Now, it's true, he does co-parent very well with his  
10 child's mother, who is here in support of him, but that son  
11 needs his father, particularly in the lead up to trial.

12 More critically, Your Honor, in my estimation,  
13 detention will be an undue burden on defense counsel in  
14 preparing for this case.

15 We don't have the discovery material. We don't have  
16 the most critical stuff. It's still forthcoming.

17 As we get it, we need Mr. Gerace to be able to review  
18 this stuff and inform us what's true, what's false, where to  
19 look, how to investigate defense leads.

20 That process, Your Honor, is unreasonably and unduly  
21 hampered if Mr. Gerace is incarcerated in any form.

22 And so, Your Honor, I submit there are terms and  
23 conditions that Your Honor can fashion that will safeguard the  
24 community, ensure his return to court, and be appropriate that  
25 are short of detention, Your Honor.

1                   **THE COURT:** Mr. Tripi -- I'm sorry. I thought you  
2 were done.

3                   **MR. SOEHNLEIN:** I'm sorry.

4                   **THE COURT:** Go ahead.

5                   **MR. SOEHNLEIN:** Sometimes I stop and really I'm just  
6 getting tired.

7                   Your Honor, finally, the timing of this motion, after  
8 we have made a motion to provide Mr. Gerace with important  
9 discovery materials, that we believe show false testimony in  
10 front of the Grand Jury is suspect, at best.

11                  Your Honor, some of Mr. Tripi's proffer came from that  
12 witness. It did. Some of the most scandalous, salacious  
13 allegations came from that witness.

14                  **MR. TRIPI:** From what witness?

15                  **THE COURT:** Hold on, Mr. Tripi.

16                  **MR. SOEHNLEIN:** And we know, Your Honor, as set forth  
17 in our motion, under seal -- we know, Your Honor, that that  
18 witness has lied.

19                  We also know that the U.S. Attorney's Office went  
20 through efforts to rehabilitate that client's testimony in the  
21 Grand Jury, as is laid out in our motion.

22                  We need to be able to provide that material to  
23 Mr. Gerace, so he can inform us what's true, what's false, so we  
24 can make a calculation about what to do with that information.

25                  It's suspect, Your Honor, that we make that motion on

1 a Tuesday, and the new arrest comes on Friday with the tampering  
2 charges.

3 Information that the Government has had for four years  
4 -- suddenly there is a new indictment.

5 So, Your Honor, we'd ask you to continue the terms and  
6 conditions of Mr. Gerace's release, consistent with the  
7 recommendation from the United States Probation.

8 **MR. TRIPI:** Just a few points, Judge.

9 **THE COURT:** Yeah. Before you go there, though, let me  
10 ask you to go right to this suggestion from Mr. Soehnlein, that  
11 the two women in the basement on the Facebook account somehow  
12 were doing this of their own volition, without any involvement  
13 of Mr. Gerace; so how do you respond to that?

14 **MR. TRIPI:** I think the Grand Jury indictment speaks  
15 for itself. We have a probable cause determination by a Federal  
16 Grand Jury that heard the evidence.

17 And that Grand Jury considered evidence from the  
18 recipient of the messages in the form of Grand Jury transcripts  
19 and the other individuals.

20 There is a probable cause finding, so all three other  
21 people who had a part in this were considered.

22 And so I think the Second Circuit case law is  
23 abundantly clear that it's the indictment that triggers the  
24 probable cause determination, and you have an indictment before  
25 you.

1               Now, I would note, to go back to probation's  
2 recommendation, the probation office in Florida during -- you  
3 want to talk about COVID -- during the middle of COVID,  
4 recommended that he be detained.

5               Now, it was about five minutes before the detention  
6 hearing, and after we made representations to Mr. Daniels about  
7 the fact that his client would have been allowed -- had he been  
8 arrested in Buffalo, would have been allowed to surrender  
9 himself.

10              So, the only reason the Government didn't move for  
11 detention was we were battling distance, initially, during the  
12 heart of COVID, and we thought that an AUSA who had no clue  
13 about any of these facts would be the one left to proffer it.

14              And we had made representations previously to  
15 Mr. Daniels that we wanted to uphold. We weren't anticipating  
16 in arresting in Florida at that time.

17              So -- but that -- interestingly, that Florida  
18 probation department recommended detention, just on the face of  
19 the indictment. Nevertheless, we agreed to conditions, but a  
20 whole lot has changed since then.

21              So the defense proffer is that probation knows all  
22 these things.

23              Probation didn't know anything that I said yesterday,  
24 because all they did was get the reclamation from Florida and  
25 disagree with it while submitting a memo that says: Oh, by the

1 way -- Andre McCray wrote a memo that says he lied to the  
2 Florida Probation Department, because he said he didn't do drugs  
3 and he tested positive for cocaine. So that addresses a little  
4 bit of that.

5 I heard Mr. Gerace has health issues for the first  
6 time. When he was arrested the other day, he was on his way to  
7 the gym, dressed in gym clothes.

8 So apparently it doesn't block him from working out.

9 I submit to you, he's just fine.

10 The Government laid out the timeline of its  
11 indictment, and one of the acquired witnesses on Friday.

12 No later than March 14th was approval sought to return  
13 the indictment in this matter; well before any defense motion.

14 If you would like to call Criminal Chief Kresse, have  
15 at it. But as an officer of the Court, that's the date we  
16 purposed charging him, and that's our internal process that I  
17 just put on the record.

18 In terms of pointing to Mr. Gerace's ex-wife in the  
19 back, I feel bad for Ms. Arida to be placed in this situation.

20 To have a documented history of abuse, to have a child  
21 in common with this man, and now be called out to come to court  
22 and sit there and pretend you're okay with this, or what?

23 What's the alternative for her with that show that was  
24 displayed a moment ago?

25 The facts are, we recovered the order signed by Judge

1 Michalski, Mr. Gerace's good friend.

2 It was a pro se order signed July 7th, 2008, the same  
3 day as the pro se application.

4 And in it, it wrote: The order -- the order does not  
5 indicate that Arida was present or on notice of the petition.

6 The order states: It appearing that notice is not  
7 required to be given to any person, and the Court being  
8 satisfied -- apparently because of the personal relationship  
9 between the judge and Mr. Gerace -- there is no reasonable  
10 objection to the change of name proposed.

11 He signs the order, as followed. This excerpt is from  
12 the search warrant application of Judge Michalski.

13 And so, I'd ask you to disregard that little show from  
14 a few moments ago. He's continuing to commit crimes. He will  
15 continue to commit crimes.

16 He's a danger to the community. He has resources  
17 making him a flight risk. The indictment triggers the statutory  
18 presumption that he's a flight risk and a danger, and the weight  
19 of the evidence clearly shows this Court that he is and he  
20 should be detained.

21 **THE COURT:** Thank you, Mr. Tripi.

22 Mr. Soehnlein, last word.

23 **MR. SOEHNLEIN:** Thank you, Your Honor.

24 Your Honor, this hearing is about a return to court,  
25 safeguarding the community, making sure that Mr. Gerace is not a

1 flight risk.

2 His history of supervision shows that he's none of  
3 those things, Your Honor. There are certainly terms and  
4 conditions that Your Honor could impose, short of detention, to  
5 ensure that those things are done.

6 While there may be a presumption, it's rebutted by the  
7 time that he's been on supervised release, Your Honor. Even the  
8 time that -- even the time when the Government alleges that he  
9 was under investigation, he didn't go anywhere. He didn't fly  
10 out of town.

11 He didn't skip town. He's here to answer the charges.  
12 He engaged attorneys. He's made it to every court appearance.

13 Aside from the EIDL controversy, there's no other  
14 criminality during that time. Not only is probation watching  
15 him, but you know that Federal law enforcement is watching him  
16 during that time as well.

17 Your Honor, we ask that you continue the terms and  
18 conditions of his release.

19 **THE COURT:** Thank you, Mr. Soehnlein.

20 All right. So I'm going to walk through my thoughts  
21 about my conclusion and my reasons and then, obviously, there  
22 will be a standard order that comes -- a written order to make  
23 sure that I've tracked all the items.

24 I've heard everything I heard on Friday and today, all  
25 pursuant to the factors in subsection G of 3142, which I've

1 studied at length.

2           Like I noted on Friday, a major focus for me is how  
3 I'm to weigh Mr. Gerace's compliance with the conditions in the  
4 19-CR-227 case, on the one hand, with several items to kind  
5 of -- the counter way and stand in the face of that; and things  
6 like the new detail that I've heard from Mr. Tripi surrounding  
7 the Facebook incident, which resulted in the three counts of  
8 indicted conduct related to the Facebook incident in this case,  
9 including the corroboration of those details.

10           Also new to me is the Government's proffer about  
11 Mr. Gerace referring to the victim witness as a snitch prior to  
12 the November 19, 2019 alleged conduct, and in real time as well.

13           I still have some concerns as well about the  
14 Government's proffer about Mr. Gerace's apparent willingness to  
15 use his contacts in the legal system to improperly disadvantage  
16 those perceived as being against him.

17           And there, in part, I'm concerned about the Michalski  
18 incident, also, as well as the Amherst Police Department  
19 detective incident that I heard about on Friday as well.

20           The cocaine and drug supplying and prostitution items  
21 aren't good facts either.

22           The loan application issues, at a minimum, present  
23 recent untrustworthy activity from June, 2020 and July, 2021.  
24 Some of that activity after the releases in the 19-CR case.

25           And in particular, noteworthy is the denial of prior

1 convictions and current indictment, among other items on those  
2 applications.

3 I also note that -- I don't know if I need to note  
4 that, but I note that witness tampering is something that goes  
5 to the heart of the justice system.

6 And I think that's something that, at a minimum, the  
7 LaFontaine case accounts for and speaks to.

8 Taking into account all of the G factors, including  
9 defendant's past conduct and how that relates to the safety of  
10 witnesses in this case and the safety of witnesses in the 19-CR  
11 case, I note that defendant's record of compliance is sufficient  
12 to rebut the presumption in section E-3.

13 Nevertheless, I find by clear and convincing evidence  
14 that no condition or combination of conditions will reasonably  
15 assure the safety of any other person in the community,  
16 especially vis-a-vis witnesses against Mr. Gerace.

17 And I also note that the case law, for example,  
18 LaFontaine, about detention and witness tampering cases also  
19 notes cases about detention and obstruction of justice cases,  
20 even absent violence or threats of violence.

21 Therefore, I order Mr. Gerace detained pending trial.  
22 He -- at the end of this proceeding, will be committed to the  
23 custody of the Attorney General. The balance of the order  
24 that's forthcoming will follow.

25 We need to look at and think about a couple things,

1 next, given this 23-CR case conclusion.

2 It triggers a couple of things in my mind, which is  
3 what are we doing about the release order in the 19-CR case.

4 Is there going to be a violation proceeding, and/or is  
5 the hearing -- there was never a detention hearing in that case,  
6 so we can't reopen it under the statute under -- again,  
7 subsection F, the flush language.

8 The point is -- we've got incongruous orders out  
9 there. Certainly, the detention order is going to trump, but I  
10 still have to deal with the fact that we've got an order in the  
11 19-case, so we've got to deal with that some way.

12 Mr. Tripi, what's your suggestion?

13 **MR. TRIPI:** I think the indictment in this case is a  
14 changed circumstance that would allow for the Court to consider  
15 the fact that it's now heard additional information and entered  
16 a detention order.

17 **THE COURT:** Right. Well, why don't you submit  
18 something and --

19 **MR. TRIPI:** I will.

20 **THE COURT:** -- and then give the defense a chance to  
21 respond to that.

22 I -- even before I came out here, Mr. Soehnlein,  
23 Mr. Cohen, I'm acutely aware that the trial date is 12 weeks  
24 away or so.

25 I've accounted for that before I came out here and

1 now, and listening to Mr. Soehnlein reminded me of it.

2 So what I'm -- defendants prepare for trial from  
3 county jails here all the time. I'm sure it's not fun, but it  
4 happens, and it's the norm for them.

5 So what I want to say is, is this: I'll consider  
6 every motion on the merits. I always do.

7 But if you're going to make a motion for temporary  
8 release to prepare for trial, it can't be on this record,  
9 because I've already considered all these things.

10 So there's got to be something new and compelling for  
11 me to consider in order to justify something like a temporary  
12 release under subdivision I.

13 Remember you have Judge Roemer tomorrow, I believe, at  
14 2 o'clock. Is there anything else that we need to talk about in  
15 the 23-CR case?

16 **MR. TRIPI:** No, Your Honor.

17 **MR. SOEHNLEIN:** Nothing further, Your Honor.

18 **THE COURT:** Okay. So let's call the 19-case, and  
19 we're going to do the Curcio piece now. Status conference on  
20 the Curcio motion.

21 **THE CLERK:** Court calls United States versus  
22 Peter Gerace, Jr., case number 19-CR-227 for a status  
23 conference.

24 Counsel, please state your appearances.

25 **MR. TRIPI:** Joseph Tripi, David Rudroff, and

1       Nicholas Cooper for the United States. Good afternoon.

2                   **MR. SOEHNLEIN:** Eric Soehnlein, Steve Cohen for  
3 Peter Gerace.

4                   **MR. COHEN:** Tyler Eckert as well, Your Honor.

5                   **THE COURT:** I'm sorry, what's that?

6                   **MR. COHEN:** I beg your pardon, sir. Tyler Eckert,  
7 E-C-K-E-R-T, is here as well. He's sitting behind me.

8                   **THE COURT:** Okay. So on the Curcio process, there is  
9 the motion to determine whether a conflict exists and what to do  
10 about it.

11                  There's been a response from Mr. Soehnlein, and I have  
12 a call in to Mr. Spitler to see what his availability is like,  
13 since he seems to be of -- by conflict purposes, available to  
14 us, and he served as Curcio counsel once before in this case for  
15 Mr. Gerace.

16                  So I'd like to use him again, if he's available and  
17 willing to do it. He hasn't gotten back to me yet.

18                  I know that I think I heard you say, Mr. Tripi, that  
19 he wasn't around today anyway, which is why he hasn't called me  
20 back.

21                  **MR. TRIPI:** There was sort of a family emergency  
22 today.

23                  **THE COURT:** Okay. So when he calls me -- I'm going to  
24 leave the next appearance on this Curcio process unscheduled, so  
25 that we can see what his calendar looks like when he calls me

1 back.

2 And then I'll put out a text order and have you come  
3 back and we'll do part two of Curcio and then part three after  
4 that, so that's probably all I can do at this point on that  
5 front.

6 Mr. Tripi --

7 **MR. TRIPI:** I have nothing else, Judge.

8 **THE COURT:** Mr. Soehnlein?

9 **MR. SOEHNLEIN:** Nothing further, Judge.

10 **THE COURT:** Mr. Cohen?

11 **MR. COHEN:** Nothing further, Judge.

12 **THE COURT:** All right. So that does it for the Curcio  
13 process status conference in the 19-CR case.

14 If there is nothing further from any of you, the  
15 defendant will remain detained pending trial in the 23-CR-37  
16 case, which is what brought us here in the first place.

17 Okay. Thank you.

18 **MR. TRIPI:** Thank you.

19

20 (Proceedings concluded at 2:28 p.m.)

21 \* \* \*

22

23

24

25

1  
2       In accordance with 28, U.S.C., 753(b), I certify that these  
3 original notes are a true and correct record of proceedings in  
4 the United States District Court for the Western District of  
5 New York before the Honorable John L. Sinatra, Jr.

6  
7  
8  
9  
10 s/ Bonnie S. Weber  
Signature

March 31, 2023  
Date

11  
12 **BONNIE S. WEBER, RPR**  
13 Official Court Reporter  
14 United States District Court  
Western District of New York  
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# **EXHIBIT E**

***IN THE DISTRICT COURT OF THE UNITED STATES***

***for the Western District of New York***

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**MARCH 2023 GRAND JURY  
(Impaneled 03/24/2023)**

**THE UNITED STATES OF AMERICA      INDICTMENT**

**-vs-**

**PETER GERACE, JR.**

**Violations:**

Title 18, United States Code, Sections  
1343, and 2  
(4 Counts, Section 3147 Allegation, and  
1 Forfeiture Allegation)

**INTRODUCTION**

**The Grand Jury Charges That:**

At all times relevant to this Indictment:

1.     Defendant PETER GERACE, JR. (“GERACE”) was a resident of Clarence, New York, within the Western District of New York.
2.     Pharaohs GC, Inc. (“PGC”) was a domestic corporation incorporated under the laws of the State of New York on or about March 25, 2005. PGC had a principal place of business at 999 Aero Drive, Cheektowaga, New York. GERACE was the 100% owner of PGC and served as the Chief Executive Officer of PGC.
3.     PGC was a “gentlemen’s club” or “strip club.” PGC offered live sexual performances to patrons in the form of exotic and/or nude dancing, *i.e.* “stripping” and/or “lap dances.” PGC employed dancers as independent contractors or W-2 employees. The dancers charged PGC’s patrons for private or semi-private lap dances. Dancers charged the

patrons a fixed rate per song and accepted tips. The dancers would then contribute a portion of the funds received to PGC.

**The Small Business Administration and Economic Injury Disaster Loan Program**

4. The United States Small Business Administration (“SBA”) is an agency within the Executive branch of the United States government that provides support to entrepreneurs and small businesses. The mission of the SBA is to maintain and strengthen the nation’s economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities following disasters.

5. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was a federal law enacted in March 2020 that was designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of financial relief was the Economic Injury Disaster Loan (“EIDL”) Program. The EIDL Program was designed to provide low-interest loans to qualifying small businesses to help them meet financial obligations and operating expenses that would have been met had a disaster not occurred.

6. To obtain a loan under the EIDL Program, a qualifying business was required to submit an online EIDL application to the SBA with truthful and accurate information. The EIDL application was required to be signed by an authorized representative of the business. The applicant was required to certify, among other things, that: (a) “[the] applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;” (b) the applicant was not “presently

subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction”; and (c) the applicant had not ever “been convicted, plead guilty, plead nolo contendere, been placed on pretrial diversion, or been placed on any form of parole or probation” “for any criminal offense.” The questions on the application, including these specific questions, were material to the SBA’s determination of eligibility for an EIDL.

7. Before an EIDL could be disbursed, the applicant was required to review and sign a Loan Authorization and Agreement (“LA&A”). By signing the LA&A, the applicant certified, among other things, that “[a]ll representations in the Borrower’s Loan application (including all supplementary submissions) are true, correct and complete and are offered to induce SBA to make this loan.” This certification was material to determining eligibility for an EIDL.

8. An applicant under the EIDL Program could also apply to modify an EIDL to, among other things, increase the amount of the loan. If the modification application was approved, the applicant was required to review, certify, and execute an Amended LA&A. By executing the Amended LA&A, the applicant certified, among other things, that: (a) “[t]here has been no substantial adverse change in Borrower’s financial condition . . . since the date of the application for this Loan[ ] (Adverse changes include, but are not limited to: judgement liens, tax liens, mechanic’s liens, bankruptcy, financial reverses, arrest or conviction of felony, etc.”; and (b) “[a]ll representations in the Borrower’s Loan application (including all supplementary submissions) are true, correct and complete, and are offered to induce SBA to make this loan.” This certification was material to determining eligibility for modification of an existing EIDL.

**COUNTS 1 - 4**

**(Wire Fraud)**

**The Grand Jury Further Charges That:**

9. The allegations in paragraphs 1 through 8 of the Introduction of this Indictment are incorporated herein by reference.

10. Between in or about March 2020, the exact date being unknown, and on or about December 2021, in the Western District of New York, and elsewhere, the defendant, PETER GERACE, JR., did devise, and intend to devise, a scheme and artifice to defraud the SBA and to obtain money and property from the SBA by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice did transmit, and cause to be transmitted, by means of wire communication in interstate and foreign commerce, any writings, signs, signals, pictures, and sounds.

11. The purpose of the scheme and artifice was for GERACE to trick and mislead the SBA into approving a loan and two loan modifications under the EIDL Program by providing false material information to the SBA and certifying the truth, correctness, and completeness of that information. Specifically, as to the initial EIDL application, GERACE falsely certified that PGC did not present live performances of a prurient sexual nature, or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature; and that he had never been convicted for any criminal offense. As to the two loan modifications, GERACE falsely certified that, since the date of the initial EIDL application, there had been no substantial adverse change in PGC's financial condition, and he had not been arrested for a felony.

**The April 5, 2020 Economic Injury Disaster Loan Application**

12. On or about April 5, 2020, GERACE submitted an online loan application under the EIDL Program to the SBA on behalf of PGC. The loan application was electronically submitted by GERACE, and caused to be submitted by GERACE, from the Western District of New York to servers located outside the State of New York.

13. In the April 5, 2020 EIDL application, GERACE falsely and fraudulently represented to the SBA that PGC did not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

14. In the April 5, 2020 EIDL application, GERACE also falsely and fraudulently represented to the SBA that he had never been convicted of any criminal offense.

15. On June 12, 2020, GERACE executed the LA&A in support of his fraudulent April 5, 2020 EIDL application. In that Agreement, GERACE certified that “[a]ll representations in the Borrower’s Loan application (including all supplementary submissions) are true, correct and complete, and are offered to induce SBA to make this loan.” In fact, as GERACE then and there well knew, the representations on PGC’s EIDL application were “not true, correct, and complete” because: (a) PGC operated as a strip club, and, as such, presented live performances of a prurient sexual nature, and derived directly or indirectly more than de minimis gross revenue through the sale of products and services, and the presentation of depictions and displays of a prurient sexual nature; and (b) because GERACE was previously convicted of a criminal offense, that is, a conviction in United States District Court for the Western District of New York, on or about November 23, 2005, for Conspiracy

to Commit Wire Fraud in violation of 18 U.S.C. § 371. The LA&A application was electronically submitted by GERACE, and caused to be submitted by GERACE, from the Western District of New York to servers located outside the State of New York.

16. Based on GERACE's false and fraudulent certifications, the SBA approved the loan application on or about June 12, 2020, and disbursed \$150,000 in United States funds to PGC under the EIDL Program.

**The August 7, 2021 Economic Injury Disaster Loan Increase Application**

17. Between on or about April 21, 2021, and on or about May 21, 2021, GERACE contacted the SBA and requested that the amount PGC borrowed under the EIDL be increased.

18. On or about August 7, 2021, GERACE executed an Amended LA&A, seeking to increase the loan he received under the EIDL Program to \$500,000. In the Amended LA&A, GERACE again falsely certified that “[a]ll representations in the Borrower’s Loan application (including all supplementary submissions) are true, correct and complete, and are offered to induce SBA to make this loan.” In fact, as GERACE then and there well knew, the representations on PGC’s EIDL application were “not true, correct, and complete” because, as described above: (a) PGC still operated as a strip club and presented live performances of a prurient sexual nature and derived more than de minimis gross revenue through the sale of products and services, and the presentation of depictions and displays of a prurient sexual nature; and (b) GERACE had been convicted of a criminal offense, that is, a federal felony in 2005. The false Amended LA&A application was electronically submitted by GERACE from the Western District of New York to servers located outside the State of New York.

19. In the Amended LA&A, GERACE further certified that “[t]here has been no substantial adverse change in Borrower’s financial condition . . . since the date of the application for this loan[ ] (Adverse changes include, but are not limited to: judgement liens, tax liens, mechanic’s liens, bankruptcy, financial reverses, arrest or conviction of a felony, etc.).” In fact, as GERACE then and there well knew, GERACE and PGC had experienced substantial adverse changes in financial circumstances since the date of the application for the EIDL. Specifically: (a) on or about February 25, 2021, GERACE was indicted and subsequently arrested on felony offenses charged in United States District Court for the Western District of New York in Case No. 19-CR-00227; and (b) as part of that indictment, “the premises, buildings, appurtenances, improvements, fixtures, and real property” associated with or owned by GERACE and PGC at 999 Aero Drive, Cheektowaga, New York had been designated subject to criminal forfeiture.

20. Based on GERACE’s false and fraudulent certifications, the SBA approved the loan modification, and on or about August 10, 2021, disbursed an additional \$350,000 to PGC under the EIDL Program.

**The December 19, 2021 Economic Injury Disaster Loan Increase Application**

21. On or about September 27, 2021, GERACE again contacted the SBA and requested that the amount PGC borrowed under the EIDL be increased.

22. On or about December 19, 2021, GERACE executed a Second Amended LA&A, increasing the loan he received under the EIDL Program to \$2,000,000. In the Second Amended LA&A, GERACE again falsely certified that “[a]ll representations in the Borrower’s Loan application (including all supplementary submissions) are true, correct and

complete, and are offered to induce SBA to make this loan.” In fact, as GERACE then and there well knew, the representations on PGC’s EIDL application were not “true, correct, and complete” because, as described above: (a) PGC still operated as a strip club and presented live performances of a prurient sexual nature and derived more than de minimis gross revenue through the sale of products and services, and the presentation of depictions and displays of a prurient sexual nature; and (b) GERACE had been convicted of a criminal offense, that is, a federal felony in 2005. The Second Amended LA&A application was electronically submitted by GERACE from the Western District of New York to servers located outside the State of New York.

23. In the Second Amended LA&A, GERACE further certified that “[t]here has been no substantial adverse change in Borrower’s financial condition . . . since the date of the application for this loan[ ] (Adverse changes include, but are not limited to: judgement liens, tax liens, mechanic’s liens, bankruptcy, financial reverses, arrest or conviction of a felony, etc.).” In fact, as GERACE then and there well knew, GERACE and PGC had experienced substantial adverse changes in financial circumstances since the date of the application for the EIDL. Specifically: (a) on or about February 25, 2021, GERACE was indicted and subsequently arrested on felony offenses charged in United States District Court for the Western District of New York in Case No. 19-CR-00227; and (b) as part of that indictment, the “the premises, buildings, appurtenances, improvements, fixtures, and real property” associated with or owned by GERACE and PGC at 999 Aero Drive, Cheektowaga, New York had been designated subject to criminal forfeiture.

24. Based on these false and fraudulent certifications, the SBA approved the loan modification, and on or about December 23, 2021, disbursed an additional \$1,500,000 to PGC under the EIDL Program.

25. On or about the dates set forth below, in the Western District of New York, and elsewhere, the defendant, PETER GERACE, JR., for the purpose of executing the scheme and artifice, did transmit, and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, that is, the wire communications set forth below:

COUNT	DATE	DESCRIPTION
1	April 5, 2020	Electronic submission of a false Economic Injury Disaster Loan application from Buffalo, New York to a United States Small Business Association contractor in West Des Moines, Iowa, via internet portal.
2	June 12, 2020	Electronic submission of a false Loan Authorization and Agreement and other closing documents in support of the fraudulent April 5, 2020 EIDL application via DocuSign from Buffalo, New York to DocuSign servers outside of New York State.
3	August 7, 2021	Electronic submission of a false Amended Loan Authorization and Agreement and other closing documents via DocuSign from Buffalo, New York to DocuSign servers outside of New York State.
4	December 19, 2021	Electronic submission of a second false Amended Loan Authorization and Agreement and other closing documents via DocuSign from Buffalo, New York to DocuSign servers outside of New York State.

**All in violation of Title 18, United States Code, Sections 1343 and 2.**

**ALLEGATION PURSUANT TO 18 U.S.C. § 3147**

**The Grand Jury Alleges That:**

26. As the defendant, PETER GERACE, JR., had been released pursuant to Chapter 207 of Title 18, United States Code, at the time of the commission of the felony offenses alleged in Counts 3 and 4 of this Indictment, should the defendant be convicted of Count 3 or Count 4 of this Indictment, the defendant is subject to the term of imprisonment prescribed in Title 18, United States Code, Section 3147(1), in addition to the penalties otherwise provided by law.

**All pursuant to Title 18, United States Code, Section 3147.**

**FORFEITURE ALLEGATION**

**The Grand Jury Alleges That:**

27. Upon conviction of any offense alleged in Counts 1 through 4 of this Indictment, the defendant, PETER GERACE, JR., shall forfeit to the United States, all his right, title and interest in any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such offenses, including but not limited to:

**MONEY JUDGMENT:**

The sum of approximately two million dollars (\$2,000,000) in United States currency that represents proceeds that defendant obtained from his involvement in the criminal conduct, which if not readily available will become a monetary judgment and will serve as a lien against the defendant's property, wherever situated, with interest to accrue at the prevailing rate per annum until fully satisfied in the event this amount is not located.

If any of the property described above, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and it is the intent of the United States to seek forfeiture of any other property of said defendant up to the value of the monetary judgment.

**All pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(2) and 982(b)(1); Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461(c).**

DATED: Buffalo, New York, June 8, 2023.

TRINI E. ROSS  
United States Attorney

BY: S/DAVID J. RUDROFF  
DAVID J. RUDROFF  
Assistant United States Attorney  
United States Attorney's Office  
Western District of New York  
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A TRUE BILL:

S/FOREPERSON  
FOREPERSON

# **EXHIBIT F**















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